

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 21-CR-265(PKC)

-against-

: United States Courthouse
: Brooklyn, New York

: June 12, 2023
: 9:00 a.m.

MICHAEL McMAHON, ZHENG
CONGYING, and YONG ZHU, also
known as "Jason Zhu,"

Defendants.

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TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE PAMELA K. CHEN
UNITED STATES DISTRICT JUDGE

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Proceedings

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10 Proceedings recorded by computerized stenography. Transcript
11 produced by Computer-aided Transcription.

12 * * *

13
14
15 (In open court - jury not present.)

16 THE COURTROOM DEPUTY: All rise.

17 THE COURT: Please be seated, everyone. Good
18 morning.

19 MR. HEEREN: Good morning.

20 MS. WONG: Good morning.

21 THE COURT: So I assume Ms. Gonzalez told you we
22 have one juror who needed a couple of minutes to get ready
23 after arriving a little bit late and then we will be ready to
24 go.

25 I understand there are no issues to address at this

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1 time; is that right?

2 MR. HEEREN: I don't think so, Your Honor.

3 MR. LUSTBERG: Judge, just to give the Court a
4 preview -- I'm not really ready to discuss it now -- we
5 learned over the weekend that the -- let me back up. The
6 Court may recall that following the testimony of Ms. Habeeb on
7 Friday --

8 THE COURT: Yes.

9 MR. LUSTBERG: -- and actually even earlier in the
10 case the Court had inquired as to whether Mr. Finning would be
11 a witness for the Government.

12 THE COURT: Right.

13 MR. LUSTBERG: On Friday, right before we left, the
14 Court will recall that we learned that Mr. Finning would not
15 be a witness. So I subpoenaed Mr. Finning. His counsel
16 graciously accepted service and then informed me that his
17 client would take the Fifth. So what that means, I'm not
18 sure, and whether there is any application that's going to
19 result from that. I know that I can't make an application for
20 the Court to immunize him. But I'm considering -- I just want
21 to think through whether that has any implications. I'm not
22 prepared to make any application at this point. But I just
23 wanted to let the Court know about that development.

24 THE COURT: I appreciate that.

25 MR. LUSTBERG: It will also mean a somewhat shorter

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1 day tomorrow for us, so.

2 THE COURT: Okay. Let me turn to the Government for
3 a moment on this. The Government obviously had put Mr.
4 Finning on their original witness list. Were you folks
5 intending to immunize him or grant him some sort of immunity?

6 MR. HEEREN: We were evaluating. We had not made
7 any final determination on it. We ultimately have decided not
8 to, obviously, since we are not calling him.

9 THE COURT: Right.

10 MR. HEEREN: That was, broadly speaking, a
11 consideration.

12 THE COURT: All right.

13 MR. LUSTBERG: And I should say in that regard, Mr.
14 Finning's counsel did not say much to me about it but did say
15 that he had requested that the Government provide immunity or
16 else his client wouldn't testify. I don't think I'm
17 surprising anybody by saying that. I don't know whether that's
18 correct from the Government's perspective, but certainly
19 that's what he has told me.

20 MR. HEEREN: The only other thing that I would add
21 to that, Your Honor, is just that in Mr. Finning's 3500, which
22 was also disclosed previously as part of regular course of
23 discovery, it was reflected in the interview from several
24 years ago that the interview was proffered protected. So, I
25 mean, I don't know that that is necessarily too much of a

1 surprise.

2 THE COURT: To be honest, when I saw him on the
3 list, I wondered whether he was a cooperator or what status he
4 occupied because of the allegation that somehow he had done
5 something that could have subjected him to prosecution or
6 discipline or something like that.

7 The only question I raise, and this is while Mr.
8 Lustberg is thinking about how to respond to this, is that it
9 does seem to me to make him an unavailable witness, and I
10 don't know if that will affect any application or prompt any
11 application to try to introduce statements that he made, and
12 I'm just thinking out loud right now.

13 We will take this up again whenever or if ever you
14 want to, Mr. Lustberg.

15 MR. LUSTBERG: Thank you.

16 THE COURT: Once you figure out how you want to
17 respond to the situation.

18 So let's go ahead and get the jury and then also
19 let's get our witness.

20 Before we get the witness, Ms. Gonzalez informed me
21 that Alternate No. 2 has a relative who passed, unfortunately,
22 Friday and today was supposed to be the observance in the
23 mosque for his passing, but she did not go because she knew
24 she was expected here. However, she said she would need to
25 leave at 1:00 today to be able to attend the memorial or

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1 funeral service or religion service. I, unfortunately, think
2 we probably have to let her go from the jury because we can't
3 afford any delay.

4 The Government?

5 MR. HEEREN: We understand the Court's position on
6 that.

7 THE COURT: All right. So any objection?

8 MR. HEEREN: No, Your Honor.

9 THE COURT: Mr. Lustberg?

10 Mr. Lustberg: No objection, Your Honor.

11 MR. TUNG: Objection.

12 THE COURT: Ms. Gonzalez will inform her we will let
13 her go because we have to get the trial done for everyone's
14 sake. And obviously I will convey everyone's condolences or
15 regret regarding her relative.

16 MR. HEEREN: Your Honor, just a last housekeeping
17 matter, in terms of the witnesses today, I just wanted to --
18 there is no change in the witnesses we plan to call today.
19 The only addition I wanted to flag is we do intend to show a
20 four-and-a-half-minute video that was previously admitted but
21 has not been shown yet.

22 THE COURT: Okay.

23 MR. HEEREN: That's one of the two videos that were
24 sent as mailings to the victims. We provided a version of it
25 this morning that contains the agreed upon transcript as

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1 subtitles on the video. So that's the only material change to
2 it. We'd play that at some point during the day.

3 THE COURT: What is the exhibit number?

4 MR. HEEREN: The exhibit number will be 506G, as in
5 Gary. The original exhibit that doesn't contain the subtitles
6 is 506D, and it comes from -- not to make it any more
7 complicated, but it comes from 506-A, which is the DVD that
8 itself was actually admitted into evidence.

9 THE COURT: Okay. I didn't really follow much of
10 that, but I don't think it really matters. Okay. So, let's
11 get our -- I forget where we were on Friday. I don't think we
12 had a witness on the stand.

13 MR. HEEREN: No.

14 THE COURT: So you're going to call a new witness
15 and we will check on the jury, and we will let Alternate No. 2
16 go.

17 As before, I will let the jury know that they
18 shouldn't speculate as to why alternate No. 2 is no longer a
19 juror, although I'm assuming they may have talked while they
20 were back there and they all know.

21 Actually, let me revise that. I shouldn't say don't
22 speculate. I will just say that she, unfortunately, had a
23 death in the family and made it impossible for her to keep
24 serving.

25 (Witness takes the stand.)

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1 THE COURTROOM DEPUTY: All rise.

2 (The jury enters the courtroom.)

3 THE COURT: Please be seated, everyone.

4 Good morning, ladies and gentlemen of the jury, I
5 hope you had a wonderful weekend. It was certainly beautiful
6 weather, as you may have noticed one of our alternate jurors
7 is no longer part of jury and you may have heard she
8 unfortunately had a death in the family that made it difficult
9 for her to continue without us having to interrupt the trial
10 and unfortunately it is in all of our interest to move forward
11 and complete the trial this week. Regrettably that alternate
12 is no longer with us. All right but we have the Government
13 ready to go to call its next witness.

14 MS. CHEN: And the Government calls Charity Davis.

15 THE COURT: Ms. Davis, if you will stand for a
16 moment so you can be sworn in.

17 THE COURTROOM DEPUTY: Please raise your right hand.
18 (Witness sworn.)

19 THE COURTROOM DEPUTY: Thank you. Have a seat.
20 Please state and spell your name for the record.

21 THE WITNESS: Charity Davis. C-H-A-R-I-T-Y. Last
22 name is Davis, D-A-V-I-S.

23 THE COURT: You may inquire, Ms. Chen.

24 MS. CHEN: Thank you, Your Honor.

25 **CHARITY DAVIS,**

Davis - direct - Chen

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1 called as a witness, having been first duly
2 sworn/affirmed, was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MS. CHEN:

5 Q Good morning, Dr. Davis.

6 A Good morning.

7 MS. CHEN: Good morning, ladies and gentlemen.

8 Q Ms. Davis, where do you currently work?

9 A I'm a forensic DNA examiner in the DNA Casework Unit at
10 the FBI laboratory in Quantico, Virginia.

11 Q What does the DNA Casework Unit do?

12 A The DNA Casework Unit examines evidence for the presence
13 of bodily fluids at the DNA Casework Unit. We look at -- for
14 the presence of blood and semen and we also examine evidence
15 for DNA.

16 Q Can you explain to the jury what are some of your duties
17 and responsibilities as a forensic examiner in this unit?

18 A As a forensic examiner, when I am assigned a case, I will
19 manage that case. So when it's assigned to me, I'll read the
20 incoming communication to determine what items of evidence
21 need to be examined and what tests need to be performed.

22 A biologist will then perform those tests for me and
23 then will give those results back to me so I can interpret
24 those results and I will summarize my results in a report and
25 testify as needed.

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1 I liken this to a doctor's office. So when you go
2 to a doctor, a doctor will examine you and determine what
3 tests need to be performed. A technician will perform those
4 tests and give the results back to the doctor and the doctor
5 will interpret those results for you.

6 Q And how long have you worked in this role as a forensic
7 examiner?

8 A Approximately 14 and a half years.

9 Q And before you were working with the FBI laboratory,
10 where were you employed?

11 A I was employed in a similar position at the Georgia
12 Bureau of Investigation, Division of Forensic Sciences in the
13 forensic biology section.

14 Q And at a very high level, can you explain to the jury
15 what is DNA testing?

16 A DNA testing is looking at an item of evidence for the
17 presence of DNA. And, so, what that involves is taking an
18 item of evidence, breaking it up into cells to get to the DNA,
19 which is extraction.

20 And then the next step would be quantitation or
21 determining how much DNA is present in an item of evidence
22 before copying that DNA. And that's all amplification. And
23 that would be copying that specific regions millions of times
24 before placing it on to an instrument where you're separating
25 that copied DNA based on size, and then I would generate a DNA

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1 profile based on that copied DNA.

2 Q Dr. Davis, can you please tell the jury about your
3 education in the field of DNA testing?

4 A I have a bachelor of science in chemistry, with a
5 specialization in biochemistry from the University of West
6 Florida in Pensacola, Florida.

7 And I have a Ph.D. in the program of genetics and
8 molecular biology from Emory University in Atlanta, Georgia.

9 Q Can you explain any training you have received in the
10 field of DNA stitching?

11 A I have received specialized training from the Georgia
12 Bureau of Investigation and also the FBI laboratory in
13 forensic serology testing and forensic DNA testing and the
14 specialized training involved literature review, lectures,
15 written exams, oral exams, practical exams, and moot court
16 exercises.

17 Q I think you just used the term serology. Can you explain
18 what that means?

19 A Serology is the identification of bodily fluids on an
20 item of evidence.

21 Q And do you receive any ongoing education in the field of
22 DNA testing?

23 A Yes. I'm required to receive a minimum of eight hours of
24 continuing education in a DNA-specific area every year.

25 Q Is the FBI laboratory accredited to perform DNA testing?

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1 A Yes.

2 Q What body accredits the FBI laboratory?

3 A ANAB accredits the FBI laboratory.

4 Q What does ANAB stand for?

5 A ANAB stands for the American National Standards Institute
6 National Accreditation Board.

7 Q And how frequently does the FBI laboratory get
8 accredited?

9 A The FBI laboratory is accredited every five years and
10 there are yearly surveillance visits by ANAB.

11 Q Can you explain briefly what goes into being accredited?

12 A What goes into accreditation is that the FBI laboratory
13 must show that we follow the standards set forth by ANAB.

14 Q Approximately how many DNA cases does the FBI laboratory
15 handle every year?

16 A Anywhere between 2,000 and 3,000 cases a year.

17 Q And approximately how many DNA cases have you handled
18 over the course of your career?

19 A Thousands.

20 Q Okay. Have you reviewed DNA analyses performed by other
21 people in the FBI laboratory?

22 A Yes. That's called a technical review. And a technical
23 review is when another qualified examiner reviews case file
24 and report prior to issuance. And every report must be
25 technically reviewed prior to it being issued by another

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1 qualified examiner. And that is just to make certain that
2 every case file is scientifically sound before it is being
3 issued.

4 Q Have you testified before in court as an expert about DNA
5 analysis?

6 A Yes, I have.

7 Q About how many times?

8 A Approximately 96.

9 Q And have you testified in federal courts?

10 A Yes.

11 Q About how many times have you testified as an expert?

12 A Approximately 96, the same amount.

13 Q Have you ever been offered as an expert but not
14 qualified?

15 A No, I have not.

16 MS. CHEN: Your Honor, at this time the Government
17 offers Dr. Charity Davis as an expert in the field of DNA
18 analysis.

19 THE COURT: Would anyone like to voir dire?

20 MR. GOLDBERGER: No, Your Honor.

21 MR. TUNG: No, Your Honor.

22 MR. LUSTBERG: No, Your Honor.

23 THE COURT: Is there any objection?

24 MR. LUSTBERG: No objection.

25 MR. TUNG: No objection.

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1 MR. GOLDBERGER: No objection.

2 THE COURT: Okay. So you're batting a thousand
3 right now. You are admitted as an expert. This makes this
4 97, I guess.

5 Q Dr. Davis, can you explain to the jury what is DNA?

6 A DNA stands for deoxyribonucleic acid. It's the genetic
7 material found in your cells. It has information for what
8 color hair you're going to have, what color eyes you're going
9 to have. It is found in virtually every cell in your body.
10 So the DNA in your skin is the same as the DNA in your blood.

11 You have two copies of DNA. You get one copy of DNA
12 from mom and another copy of DNA from dad.

13 DNA typically doesn't change over time. It is set
14 at conception and remains the same throughout your life. And
15 with the exception of identical twins, everyone's DNA is
16 unique.

17 Q Can a person leave DNA behind on an object?

18 A Yes.

19 Q What are some ways that a person can do that?

20 A One way you can leave DNA behind is if you're cut, you
21 can leave your blood behind. Blood has DNA.

22 Another way you can leave DNA behind is, for
23 example, if you're wearing a mask and you're talking, you can
24 leave spit behind, because even though saliva itself doesn't
25 have DNA, the skin cells in your saliva does have DNA, and so

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1 those skin cells in your saliva would leave DNA behind.

2 Another way to leave DNA behind would be if you're
3 you touching an object. If you're touching an object enough,
4 there would be enough skin cells behind for me to be able to
5 detect that DNA.

6 Q Dr. Davis, are you familiar with the phrase called a DNA
7 profile?

8 A Yes.

9 Q What is a DNA profile?

10 A A DNA profile is a collection of markers that I'm looking
11 at. So more than 99 percent of your DNA is the same among
12 individuals. It's what make us human. It gives us two arms,
13 two legs.

14 Approximately .3 to .5 percent of your DNA is what
15 differs amongst individuals and makes us unique. Of that .3
16 to .5 percent of DNA that differs amongst individuals, I'm
17 looking at about 21 markers or locations of your DNA that
18 differs based on size. They are called STR or short tandem
19 repeats. And those 21 locations I'm looking at, that makes up
20 your DNA profile.

21 Q And looking at the entirety of those 21 markers or
22 locations, is everyone's DNA profile unique?

23 A Yes, with the exception of identical twins.

24 Q Is it possible to compare DNA profiles from two sources
25 to determine whether the DNA came from the same contributing

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1 individual?

2 A Yes.

3 Q Okay. And can you again briefly explain -- I think you
4 touched upon it earlier, but briefly explain that process to
5 the jury.

6 A So what I would do in a comparison is to take the DNA
7 profile from an item of evidence and look to see if it's the
8 same or different from a known reference sample from and just
9 do that comparison.

10 Q When you say known reference sample, what does that mean?

11 A A known reference sample is either blood taken from an
12 individual or buccal sample. A buccal sample is just the
13 swabbing of the cheek from an individual.

14 Q After you conduct that comparison, are you able to
15 determine whether there's a match or whether there's an
16 exclusion?

17 A Yes.

18 Q Can you explain what your analysis is for that
19 comparison?

20 A So, I can draw two conclusions: I can conclude that it's
21 an exclusion, so that the known reference sample is not the
22 same as the DNA from the item of evidence, so that person who
23 gave their known reference sample is not a potential
24 contributor to the DNA from the item of evidence, or that the
25 known reference sample is the same or consistent with the item

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1 of evidence, so that's a match.

2 And in that instance, if I've determined that the
3 known reference sample is consistent with the item of
4 evidence, I need to calculate a likelihood ratio.

5 Q What is a likelihood ratio?

6 A A likelihood ratio is calculating two questions. So it's
7 comparing two questions: The probability of the profile of
8 the DNA of the item of evidence, if the person of interest is
9 a potential contributor, divided by the probability of the
10 profile of the item of evidence if someone else is a
11 contributor. And I'm weighing those two options to see which
12 one is heavier.

13 Q As a forensic examiner, how do you become involved in a
14 case?

15 A I become involved in a case when it is assigned to me.

16 Q Okay. And are you provided items of evidence?

17 A Yes. They will be provide in incoming communication and
18 those items of evidence will then be routed up to the DNA
19 Casework Unit and be stored in a locked storage vault.

20 Q Okay. And what happens when an item of evidence is ready
21 to be examined?

22 A When it's ready to be examined, a biologist can go to
23 that vault and take it out and then they will know what items
24 of evidence I have assigned them to process and they will
25 clean their bench, put down a clean benchtop, piece of butcher

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1 tape paper, and they will only process one item of evidence at
2 a time.

3 They will open that item of evidence and enter their
4 notes contemporaneously into the computer and perform the
5 tests that I have told them to perform.

6 Q I'm going to direct your attention to April of this year.
7 Were you asked to compare a known DNA sample from Congying
8 Zheng against that from a piece of evidence?

9 A Yes, I was.

10 Q What was that piece of evidence?

11 A It was a cigarette butt.

12 MS. CHEN: May we publish what's in evidence as
13 Government Exhibit 203, please.

14 THE COURT: You may.

15 (Exhibit published.)

16 MS. CHEN: If we can go to paragraph 5.

17 I'm going to read paragraph 5, which states:
18 Government Exhibit 503 is a cigarette butt seized by a law
19 enforcement agent at the driveway of -- there is an address --
20 in Warren, New Jersey, on or about September 5, 2018 (item B
21 nine, Invoice No. E6286443).

22 Your Honor, may I approach?

23 THE COURT: You may.

24 Q Dr. Davis, I've just handed you what's been premarked for
25 identification as Government Exhibit 503. Do you see that?

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1 A Yes, I do.

2 Q Do you recognize this exhibit?

3 A Yes, I do. I recognize it by the unique laboratory
4 number, 2018-02843, and also by my biologist initials.

5 Q Is this exhibit the cigarette butt you compared against a
6 known DNA from Congying Zheng?

7 A Yes, it is.

8 MS. CHEN: Your Honor, the Government moves into
9 evidence Government Exhibit 503.

10 MR. LUSTBERG: No objection.

11 MR. TUNG: No objection.

12 MR. GOLDBERGER: No objection.

13 THE COURT: Admitted.

14 (Government's Exhibit 503 received in evidence.)

15 THE COURT: You may publish.

16 Did you want to hand it to the jury or are you going
17 to --

18 MS. CHEN: I will put it on the ELMO.

19 THE COURT: That's a good idea.

20 Q Dr. Davis, can you see this?

21 A Yes, I can.

22 Q Can you explain what this exhibit is?

23 A That's the cigarette butt that was examined previously in
24 a previous report.

25 Q Okay. Was there a DNA profile obtained from this

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1 cigarette butt?

2 A Yes, there was.

3 Q What did that DNA profile show?

4 A That previous report indicated that male DNA profile was
5 obtained and it was interpreted as originating from one
6 individual.

7 Q Is that one individual as opposed to multiple
8 individuals?

9 A Yes.

10 Q Okay. Do you have an understanding as to how DNA is left
11 on a cigarette butt?

12 A The understanding would be that it would be left from
13 somebody placing it on their lips and you can imagine that
14 that would be skin cells being left on the filter end of the
15 cigarette butt.

16 Q And did you conduct the analysis in determining the DNA
17 profile for this cigarette butt?

18 A No. It was a previous DNA examiner, Melinda Brooks, who
19 did that initial interpretation.

20 When I was asked to do the comparison to Mr. Zheng,
21 I performed another technical review of that report in order
22 to do my comparisons and I ended up agreeing with those
23 initial conclusions.

24 Q I'm going to turn now to the known DNA sample from
25 Congying Zheng. Do you know how the sample was taken?

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1 A It was a buccal sample, so it was a swabbing of the
2 inside cheek.

3 Q Can you explain what the swab itself looks like when you
4 are doing a buccal swab?

5 A It would be a sterile -- you can imagine a sterile Q-tip
6 and it's just the swabbing of the inside of the cheek.

7 Q And were you able to obtain a DNA profile from this
8 buccal swab sample?

9 A Yes.

10 Q Did you compare the DNA profile obtained from Congying
11 Zheng against that of the male donor to the cigarette butt?

12 A Yes.

13 Q And, again, can you briefly explain how you did that
14 comparison?

15 A What I did is I looked at the two profiles and determined
16 whether they were the same or if they were different.

17 Q And what, if anything, did you conclude from that
18 comparison?

19 A I concluded that Mr. Zheng's DNA profile was consistent
20 with the DNA profile from the cigarette butt, and so I did
21 calculate likelihood ratio. And the DNA results from the
22 cigarette butt are three octillion times more likely if Mr.
23 Zheng is a contributor than in if an unknown individual is a
24 contributor.

25 Q And for those of us who don't know what an octillion is,

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1 how many zeros, or can you explain what the number is, one
2 octillion?

3 A An octillion has 27 zeros.

4 Q So is an octillion more than one trillion, times one
5 trillion?

6 A Yes. A trillion has 12 zeros.

7 Q And, Dr. Davis, again, what is your ultimate conclusion
8 as to the cigarette butt and the known sample from Congying
9 Zheng?

10 A The -- my conclusion was the DNA results from the
11 cigarette butt are three octillion times more likely if Mr.
12 Zheng is contributor than if an unknown individual is a
13 contributor and this provides very strong support for
14 inclusion.

15 MS. CHEN: Your Honor, may I have one moment?

16 THE COURT: Yes.

17 MS. CHEN: No further questions, Your Honor.

18 THE COURT: Thank you very much.

19 Any cross-examination?

20 MR. GOLDBERGER: No.

21 MR. LUSTBERG: No, Your Honor, no questions.

22 MR. TUNG: No questions.

23 THE COURT: Thank you very much, Doctor. You may
24 step down and are excused.

25 The Government will call its next witness.

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1 MS. BONOMO: Thank you, Your Honor. The Government
2 calls Jessica O'Connor.

3 THE COURT: All right.

4 So, Ms. O'Connor, if you will come up here to the
5 witness box and remain standing and we will swear you in.

6 THE COURTROOM DEPUTY: Please raise your right hand.
7 (Witness sworn.)

8 THE COURTROOM DEPUTY: Thank you.

9 Have a seat. Please state and spell your name for
10 the record.

11 THE WITNESS: Jessica O'Connor, J-E-S-S-I-C-A. O,
12 apostrophe, C-O-N-N-O-R.

13 THE COURT: You may inquire.

14 MS. BONOMO: Thank you, your Honor.

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O'Connor - direct - Bonomo

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1 JESSICA O'CONNOR,

2 called as a witness, having been first duly

3 sworn/affirmed, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. BONOMO:

6 Q Good morning.

7 A Good morning.

8 Q Where did you travel from to be here today?

9 A From my home in Palmyra, New Jersey.

10 Q What do you do?

11 A I'm a Regulatory Officer II with the New Jersey Motor
12 Vehicle Commission.

13 Q And is regulatory officer your title at the New Jersey
14 Motor Vehicle Commission?

15 A Yes.

16 Q What is the New Jersey Motor Vehicle Commission?

17 A It is the State executive branch agency that regulates
18 driver's license, vehicle registration, vehicle title, motor
19 vehicle dealers, as well as many other things.

20 THE COURT: Just a tad slower.

21 THE WITNESS: Sorry.

22 THE COURT: No worries. Okay.

23 Q Is the New Jersey Motor Vehicle Commission sometimes
24 abbreviated NJMVC or MVC?

25 A Yes.

O'Connor - direct - Bonomo

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1 Q How long have you worked for the MVC?

2 A Since January of 2019.

3 Q What are your primary duties and responsibilities as a
4 regulatory officer at the MVC in?

5 A I currently serve as the official custodian of records
6 for the Commission. I also serve as the chief privacy officer
7 and I ensure compliance with the New Jersey Driver's Rights
8 and Protections Act.

9 Q Have you held any other roles as an employee of the MVC?

10 A Yes. Previously, I investigated equal employment
11 opportunity discrimination claims against employees and by
12 customers under the Title 6 legislation.

13 I also investigated ethics complaints, as well
14 Conscientious Employee Protection Act claims, also known as
15 whistleblower claims.

16 Q I would like to start off by asking you a few brief
17 background questions about the Motor Vehicle Commission. Does
18 the Motor Vehicle Commission collect personal information
19 about individuals in the ordinary course of its business?

20 A Yes.

21 Q What types of information does it collect?

22 A We collect the name, driver's license number, address,
23 social security number, height, weight, eye color, and hair
24 color.

25 Q Does the New Jersey Motor Vehicle Commission also collect

O'Connor - direct - Bonomo

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1 information about -- details about an individual's car?

2 A Yes.

3 Q Like a VIN number?

4 A Yes.

5 Q Are you familiar with New Jersey's customer abstract
6 information retrieval program?

7 A Yes.

8 Q Is that sometimes commonly abbreviated as CARE?

9 A Yes.

10 Q Also referred to as the Limited Online Access Program?

11 A Yes.

12 Q Generally speaking, what is CARE?

13 A So CARE is a program that the commission offers that
14 entities can apply to participate in that allows them to
15 access personal information affiliated with motor vehicle
16 records on a per lookup basis for a fee.

17 Q What types of entities can apply to participate in CARE?

18 A All sorts of entities can apply to participate,
19 generally, Government entities, for-profit private entities,
20 we have nonprofit entities, municipal prosecutors, et cetera.

21 Q And what type of information is stored in the CARE
22 database that these entities can potentially access?

23 A For their access, driver history, vehicle registration
24 history, title history, and vehicle title inquiry.

25 Q Does the New Jersey Motor Vehicle Commission place

O'Connor - direct - Bonomo

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1 restrictions on the use of information for those who
2 participate in the CARE program?

3 A Yes.

4 Q Why is that?

5 A Well, twofold: First, because the New Jersey Drivers
6 Privacy Protection Act and our regulations require us to, and
7 secondly, because we are trusting these entities with
8 essentially -- I wouldn't say unfettered access, but broad
9 access to our system. So, as a result, we're trusting them
10 with the personal information, and, in return, we put
11 additional restrictions on their use of that information
12 because we are trusting them.

13 Q In your role as a regulatory officer, I believe you
14 mentioned you were the official custodian of records at the
15 Motor Vehicle Commission?

16 A Yes.

17 Q And in that position, have you gained familiarity with
18 the manner in which the Commission's business records are
19 created and maintained?

20 A Yes.

21 MS. BONOMO: I'd like to show the witness only
22 what's previously marked as Government Exhibits 408A and 408H.
23 And, Ms. McMahon, if you could bring up both and briefly
24 scroll through each for the witness.

25 Q Ms. O'Connor, have you had an opportunity to take a look

O'Connor - direct - Bonomo

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1 at the exhibits?

2 A Yes.

3 Q Let's start with Government Exhibit 408A. Do you
4 recognize this document?

5 A Yes, I do.

6 Q What is it?

7 A The first page is a cover letter indicating that there is
8 an executed agreement for the limited online access program.

9 Q And that's the CARE program?

10 A Correct.

11 Q And behind the cover letter is a copy of the actual
12 agreement --

13 A That is correct.

14 Q -- present?

15 And then turning next to Government Exhibit 408H, do
16 you recognize this document?

17 A Yes.

18 Q What is it?

19 A It is a user transaction report that spans from
20 approximately April of 2016 through September of 2019.

21 Q With respect to both Government Exhibits 408A and 408H,
22 are these records created by the New Jersey Motor Vehicle
23 Commission as part of its official duties or activities?

24 A Yes.

25 Q Are the New Jersey Motor Vehicle Commission employees who

O'Connor - direct - Bonomo

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1 created and maintain these records under a duty to do so
2 accurately?

3 A Yes.

4 Q Were the entries in these records made at or near the
5 time of the events reflected in them?

6 A Yes.

7 Q With respect to the user agreement, was that record made
8 by an employee with knowledge of the user agreement?

9 A Yes.

10 Q With respect to the user transaction report, was that
11 record automatically generated by the Motor Vehicle Commission
12 based on a particular user's accesses of the CARE database?

13 A Yes.

14 Q Were both records kept in the course of the Motor Vehicle
15 Commission's regular activities?

16 A Yes.

17 Q Was it a regular practice of the Motor Vehicle Commission
18 to maintain these records?

19 A Yes.

20 MS. BONOMO: Your Honor, the Government moves into
21 evidence 408A and 408H.

22 MR. TUNG: No objection.

23 MR. GOLDBERGER: No objection.

24 MR. LUSTBERG: No objection.

25

O'Connor - direct - Bonomo

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1 THE COURT: Admitted.

2 (Government's Exhibits 408A and 408H received in
3 evidence.)

4 THE COURT: You may publish.

5 MS. BONOMO: Thank you, Your Honor. Let's start
6 with Government Exhibit 408A.

7 Q For the benefit of the jury now, Ms. O'Connor, can you
8 briefly describe what this exhibit is again?

9 A Sure. So the first page is a cover letter to the McMahon
10 Investigative Group from the Commission indicating that their
11 executed agreement is attached.

12 MS. BONOMO: And, Ms. McMahon, if you can please
13 zoom in on the first body paragraph of the cover letter.

14 Q Ms. O'Connor, does this cover letter indicate when this
15 particular agreement was in effect?

16 A Yes.

17 Q And when was this user agreement in effect?

18 A It became effective on May 23, 2016 and expired on May
19 23, 2017.

20 Q Okay.

21 MS. BONOMO: Thank you, Ms. McMahon. You can close
22 that call out.

23 If we can look at the second page of the PDF.

24 Q Other than the Motor Vehicle Commission, who is the other
25 party to this agreement?

O'Connor - direct - Bonomo

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1 A McMahon Investigative Group.

2 MS. BONOMO: Thank you. If we can then look at page
3 5 of the user agreement.

4 Q Do you see the header at the top that says, Program
5 participant's obligations?

6 A Yes.

7 MS. BONOMO: If we can please zoom in first on
8 paragraph two below that.

9 Q Ms. O'Connor, can you please read paragraph two of this
10 portion of the agreement to the jury?

11 A Sure.

12 "While it is understood that the electronic records
13 provided by the Commission will contain the name and addresses
14 of individuals, the program participant shall hold such
15 information in confidence, unless disclosure is required by
16 law, and shall use it only in accordance with the terms of
17 this agreement."

18 Q Thank you.

19 MS. BONOMO: And then, Ms. McMahon, if you could
20 please call out next the bolded paragraph 9 at the bottom of
21 this page.

22 Q Ms. O'Connor, could you please read this paragraph aloud
23 for the jury?

24 A Sure.

25 "The program participants is strictly prohibited

O'Connor - direct - Bonomo

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1 from using Commission records to conduct surveillance or to
2 investigate or locate an individual for reasons not
3 specifically related to motor vehicle activity, including, but
4 not limited to, divorced disputes and match-matching
5 services."

6 MS. BONOMO: Then if we can please skip ahead to the
7 eighth page of this document.

8 Q Ms. O'Connor, was this agreement signed?

9 A Yes.

10 Q And who signed this agreement on behalf of the McMahon
11 Investigative Group?

12 A Michael McMahon and Mary Clare McMahon as a witness.

13 Q What was the date of the signature?

14 A May 1, 2016.

15 MS. BONOMO: Thank you. You can remove this exhibit
16 from the screen.

17 If we can turn next to Government Exhibit 408H.

18 Q For the benefit of the jury now, what type of Motor
19 Vehicle Commission record is this?

20 A This is a user transaction report for a CARE account.

21 Q Briefly speaking, what is a user transaction report?

22 A So it is a log of every single transaction that a CARE
23 user has accessed for a stated period of time.

24 Q And I believe you mentioned this earlier, are user
25 transactions reports, are the entries in these reports

O'Connor - direct - Bonomo

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1 automatically generated every time a particular CARE user
2 accesses information on the database?

3 A Yes.

4 Q Let's just briefly walk through how to read some of the
5 information in this report.

6 MS. BONOMO: If we could, Ms. McMahon, blow up the
7 header and maybe a couple of entries below that.

8 Q Let's start with the first column. What does the header
9 in the first column on the left stand for?

10 A So that is the customer number.

11 Q And what information is contained in this column?

12 A That is the CARE account number for the entity that
13 participates.

14 Q Did you familiarize yourself with this record prior to
15 testifying today?

16 A Yes.

17 Q Did you determine the identity of it the CARE database
18 user associated with 0L025460?

19 A Yes.

20 Q Who was that user?

21 A McMahon Investigative Group.

22 MS. BONOMO: If we can turn to the next column over
23 with RQST_type at the top.

24 Q What does the title of that column stand for?

25 A Request type.

O'Connor - direct - Bonomo

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1 Q What does OL mean?

2 A Online.

3 Q One column over with menu_opt at the top. First of all,
4 what does the title of that column stand for?

5 A It's menu option. It's the screen that the entity would
6 have accessed on our database.

7 Q So this column would tell us what type of information
8 that particular user would have seen when they accessed the
9 database?

10 A Correct.

11 Q And what does RI mean?

12 A Registration inquiry.

13 Q And then turning next to lookup key, what is the
14 information contained in this portion of the record?

15 A That would be the information that the user entered to
16 look up a record.

17 Q In the case of the first or the second entries on this
18 page, what does those appear to you to be?

19 A License plate numbers.

20 Q And then next column over appears to say record find
21 indicator. Did I interpret correctly?

22 A It's record found indicator.

23 Q Record found indicator. And what is the information in
24 this column?

25 A If a yes/no flag based on whether or not a record was

O'Connor - direct - Bonomo

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1 returned.

2 Q Okay. We can skip over a couple of columns and go to the
3 column with the header TRNS_INIT. What does the information
4 in that column contain?

5 A That contains the date and time in 24-hour format when
6 the transaction was initiated.

7 Q Is the time in Eastern Standard Time?

8 A Yes.

9 Q And the next column over, how about what information is
10 contained in that column?

11 A It is the date and time again in military or 24-hour time
12 when the transaction was completed.

13 Q And, finally, skipping over a column, audit login ID, do
14 you see that?

15 A Yes.

16 Q What is the information that column?

17 A This is the specific user underneath the account that
18 actually performed the transaction.

19 Q Okay. Thank you.

20 MS. BONOMO: If we could remove this call out.

21 Q Ms. O'Connor, do you see an entry in this record for a
22 CARE database query made April 6, 2017?

23 A Yes.

24 MS. BONOMO: I will just give Ms. McMahon a moment
25 to blow it up. Thank you, Ms. McMahon.

O'Connor - direct - Bonomo

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1 Q Based on your understanding of how to interpret this
2 record, what license plate number was queried?

3 A YNB58G.

4 Q And what time on April 6th was this query conducted?

5 A It would have been 19:35, in 24-hour format.

6 Q So around 7:35 p.m.?

7 A Correct.

8 Q And I see that there's an RI in the menu option column.

9 A Yes.

10 Q What does that tell you about what information this user
11 would have seen when they conducted this query?

12 A The registration inquiry screen returns the driver's
13 license number, the name, the address, the county where
14 registrant lives, the information about the vehicle, such as
15 the year, make, model, and color of the vehicle, the VIN
16 number of the vehicle, and the expiration date of the
17 registration, as well as the number of axles the vehicle has,
18 the weight of the vehicle, and there is a yes/no flag about
19 whether or not the vehicle is leased.

20 MS. CHEN: One moment.

21 THE COURT: All right.

22 MS. BONOMO: Thank you, Ms. O'Connor, no further
23 questions.

24 THE COURT: Thank you.

25 Any cross-examination?

O'Connor - cross - Lustberg

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1 MR. LUSTBERG: Yes, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. LUSTBERG:

4 Q Good morning, Ms. O'Connor.

5 A Good morning.

6 Q Just a couple of questions. The first is you've been
7 testifying with regard to records regarding somebody called
8 McMahon Investigative Group; correct?

9 A Yes.

10 Q And you mentioned on your direct examination that there's
11 a number of different entities that apply to be a part of the
12 CARE program; correct?

13 A Yes.

14 Q And among those entities are, to your knowledge, private
15 investigators?

16 A Yes.

17 Q Okay. And once a private investigator is allowed to
18 participate in the program, the CARE program, that is, they
19 can make the sorts of queries that you have been describing;
20 right?

21 A Correct.

22 Q And just a couple of questions with regard to those
23 queries. You mentioned that if -- withdrawn.

24 Let me go back to Exhibit 408H that you've been
25 testifying about. Remember that was the list of license

O'Connor - cross - Lustberg

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1 plates that McMahon Investigative had run?

2 A Yes.

3 MR. LUSTBERG: Can we just pull that up, Ms. Conti.
4 Okay. Can you display it.

5 THE COURTROOM DEPUTY: Can you let me know the
6 exhibit number again?

7 MR. LUSTBERG: Yes. This is Exhibit 408H in
8 evidence.

9 Q So this is an indication of all of the license plates
10 that McMahon Investigative ran from the period from 2000 --
11 from April 2016 through September 2019; is that correct?

12 A Yes.

13 Q And the one -- and just to make sure I understand, you
14 mentioned in testifying with regards to -- withdrawn there
15 too.

16 Let me ask this question: So if there is any
17 inquiry of the database, this document is automatically
18 generated; right?

19 A Correct.

20 Q Okay. And, so, when an investigator runs a license
21 plate, that is information that is automatically conveyed to
22 the New Jersey Motor Vehicle Commission?

23 A Yes.

24 Q Which I'm going to continue to try to remember is MVC as
25 opposed to DMV, because I'm from New Jersey and we always

O'Connor - cross - Lustberg

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1 thought of that as DMV. It used to be called DMV, right?

2 A Yes, about 20 plus years ago.

3 THE COURT: You're aging yourself there.

4 MR. LUSTBERG: I didn't realize it was that long
5 ago, but time flies when you're having fun.

6 Q So, I just want to ask a couple other questions. It's
7 the case, isn't it, once one of these entries appears that MVC
8 can do an audit or otherwise make inquiry of the CARE
9 participant as to what the reason for the inquiry was;
10 correct?

11 MS. BONOMO: Objection, Your Honor.

12 THE COURT: Overruled.

13 Do you remember the question?

14 THE WITNESS: Yes. Yes.

15 THE COURT: "Yes," you remember the question. And
16 now can you answer the question?

17 THE WITNESS: Yes.

18 THE COURT: Go ahead and answer it.

19 Q And are you aware of whether any such inquiry was made
20 with regard to any of the requests on Government Exhibit 408H?

21 A I can't say without having documents in front of me.

22 Q Okay. Well, let me show you a document.

23 MR. LUSTBERG: Let me show you what has been marked
24 for identification for the witness and counsel only at this
25 point as Government Exhibit 408I.

O'Connor - cross - Lustberg

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1 And, Judge, can we have a very brief sidebar with
2 regard to this.

3 THE COURT: All right.

4 (Continued on the following page.)
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Sidebar

1541

1 (The following sidebar held outside of the hearing
2 of the jury.)

3 THE COURT: Just one other housekeeping matter.
4 Just so the record clear, you may want to go back and actually
5 ask the question because I asked her two questions in a row to
6 which she said yes and yes.

7 MR. LUSTBERG: That was confusing.

8 THE COURT: That was my fault.

9 So the issue?

10 MR. LUSTBERG: This is a mechanical issue we have
11 gone over this once before. This is another exhibit that has
12 been marked by the Government but was not introduced by the
13 Government. I'm happy to use the Government's marking or
14 remark it as a defense exhibit. I didn't want to handle that
15 the wrong way.

16 THE COURT: There is no wrong way.

17 How would the Government like to proceed?

18 MS. BONOMO: That's fine by me.

19 I would just note -- I'm not sure how much
20 questioning on this document, but it sounds like it's getting
21 a little outside the scope. I didn't ask her about their
22 audit process.

23 THE COURT: True, but they can call her and I think
24 rather than going through that process, let's let him ask
25 those questions.

Sidebar

1542

1 MS. BONOMO: Certainly, Your Honor.

2 MR. LUSTBERG: Okay. Thank you, Your Honor.

3 (End of sidebar conference.)

4 (Continued on next page.)

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O'CONNOR - CROSS - LUSTBERG

1543

1 (In open court.)

2 THE COURT: Mr. Lustberg, maybe clean up that one
3 issue that I made a mess.

4 MR. LUSTBERG: Thank you, your Honor.

5 BY MR. LUSTBERG:

6 Q So the record is clear I'm going to repeat a couple of
7 last questions back.

8 I asked you the question of whether with regard to
9 Exhibit 408H, which was the list of license plates, whether
10 the MVC can perform audits with respect to the purpose of an
11 inquiry. What is the answer to that?

12 A Yes, we can.

13 Q Thank you.

14 Now I'm showing you what is marked for
15 identification as Government Exhibit 408I. Do you see that on
16 your screen?

17 A Yes.

18 Q Have you seen this document before?

19 A Yes.

20 Q You reviewed this -- did you review this document in
21 preparation for your testimony today?

22 A Yes.

23 Q Is this the kind of document that's kept in the ordinary
24 course by the MVC?

25 A Yes.

O'CONNOR - CROSS - LUSTBERG

1544

1 MR. LUSTBERG: Your Honor, I would move Government
2 Exhibit -- although it's a defense exhibit, Government Exhibit
3 408I into evidence.

4 THE COURT: Any objection?

5 MS. BONOMO: No objection.

6 THE COURT: 408I is admitted. You may publish.

7 (Government Exhibit 408I, was received in evidence.)

8 BY MR. LUSTBERG:

9 Q In the middle of the page on 408I, it references an audit
10 that was conducted of a record search by McMahon
11 Investigative, correct?

12 A Yes.

13 Q If you flip through the document, my question is, does
14 this document reflect an inquiry by the MVC of Mr. McMahon
15 with regard to a particular inquiry that he had made?

16 A Yes.

17 Q The top entry on the first page of the document is a
18 statement from Mr. McMahon that says: I was assigned to
19 investigate whether or not the defendant did in fact own said
20 vehicle. Do you see that?

21 A Yes.

22 Q The defendant lost a civil suit at trial and claimed to
23 not own but lease said vehicle. Correct?

24 A Yes.

25 Q One of the things you testified earlier was that one of

O'CONNOR - CROSS - LUSTBERG

1545

1 the things that one learns in doing the kind of search that
2 you've been describing today, is whether a vehicle was leased
3 or owned. Correct?

4 A Yes.

5 Q Is that an appropriate reason to request a record like
6 this?

7 MS. BONOMO: Objection, your Honor.

8 THE COURT: Overruled. Actually, let me take that
9 back. Define appropriate.

10 MR. LUSTBERG: I think that's fair; it was not a
11 good question.

12 BY MR. LUSTBERG:

13 Q In a circumstance in which an inquiry is made as to
14 whether a vehicle is leased or owned, that's information that
15 comes out of the response to the inquiry, correct?

16 A Yes.

17 Q When an audit like this -- by the way, do you know what
18 the result of this audit was?

19 A I do not.

20 Q Okay. Do you have any reason to believe that as a result
21 of this audit Mr. McMahon's ability to access -- McMahon
22 Investigative's ability to access the CARE system was revoked?

23 A I can't say.

24 Q You can't say one way or the other.

25 A Exactly.

O'CONNOR - CROSS - LUSTBERG

1546

1 MR. LUSTBERG: One moment, Judge.

2 Q One more set of questions. You can take down that
3 exhibit.

4 I want to show you one other exhibit. And let me
5 for purposes of this discussion, it's for the witness and
6 counsel, it's Exhibit 408D.

7 THE COURT: Another Government marked exhibit.

8 MR. LUSTBERG: Thank you, your Honor.

9 BY MR. LUSTBERG:

10 Q Have you seen this document before?

11 A Yes.

12 Q And this is the application -- what is it?

13 A It is an application for participation in the CARE
14 program.

15 Q Is this the sort of document that is maintained in the
16 ordinary course of business by the MVC?

17 A Yes.

18 MR. LUSTBERG: Let me move the admission of this
19 exhibit.

20 THE COURT: Any objection?

21 MS. BONOMO: I have an objection as to relevance of
22 this particular document.

23 THE COURT: Let's have a sidebar.

24 (Continued on the next page.)

25

Sidebar

1547

1 (Sidebar conference.)

2 THE COURT: Why wouldn't it be relevant since you
3 folks put in the fact that he signed up for the CARE program?
4 This appears to be his application.

5 MS. BONOMO: It's for the wrong year. This is 2015,
6 which wouldn't have been the appropriate application for
7 the --

8 MR. LUSTBERG: It was his first application. He
9 then does a subsequent application. I was going to put them
10 both in. And I wasn't going to ask any questions about it,
11 but I'll complete the record so that is clear. There is a
12 slight difference that I understand why they are interested
13 in.

14 THE COURT: Okay. But it's relevant just to show
15 that he had been a member this program for a number of years.

16 MR. LUSTBERG: And he submitted appropriate
17 application, whatever -- it's just that he applied.

18 THE COURT: Any objection about that?

19 MS. BONOMO: No.

20 MR. LUSTBERG: I'll put in the subsequent one as
21 well.

22 MS. BONOMO: Okay.

23 (End of sidebar conference.)

24 (Continued on the next page.)

25

O'CONNOR- CROSS - LUSTBERG

1548

1 (In open court.)

2 THE COURT: Mr. Lustberg, if the Government doesn't
3 have an objection to the other one go ahead and put them both
4 in at the same time.

5 MR. LUSTBERG: Okay. So Mr. McMahon will move the
6 admission of 408C and 408D.

7 THE COURT: No objection from the Government,
8 correct?

9 MS. BONOMO: No objection.

10 THE COURT: Both are admitted. You may publish.

11 (Government Exhibits 408C and 408D, were received in
12 evidence.)

13 BY MR. LUSTBERG:

14 Q With regard to 408D, do you know whether this was
15 Mr. McMahon's first application to participate in the CARE
16 program?

17 THE COURT: We're looking at 408D.

18 A Scroll up to the top please.

19 Q Sure.

20 A Yes, this would be the new application.

21 Q If we could show the first page of 408C.

22 THE COURT: So the record is clear, these are both
23 Government-marked exhibits introduced by the defense.

24 BY MR. LUSTBERG:

25 Q This one is a renewal application, correct?

O'Connor - redirect - Bonomo

1549

1 A Yes.

2 MR. LUSTBERG: Your Honor, I have no further
3 questions of this witness. Thank you very much.

4 THE COURT: Thank you, Mr. Lustberg.

5 Any questions from Mr. Zheng's team.

6 MR. GOLDBERGER: No.

7 THE COURT: Any cross by you, Mr. Tung?

8 MR. TUNG: No.

9 THE COURT: Redirect?

10 MS. BONOMO: Briefly, your Honor.

11 REDIRECT EXAMINATION

12 BY MS. BONOMO:

13 Q Ms. McMahon, if we could please pull up Government
14 Exhibit -- Defense Exhibit 408I.

15 Ms. O'Connor, I believe you had a chance to review
16 this record briefly before?

17 A Yes.

18 Q If we could look at the second page of the record. If we
19 could zoom in on the chart, the small chart at the center of
20 the page. Does this portion of the record tell us what
21 specific look-up was actually audited here?

22 A Yes.

23 Q The look-up key, does that mean the license plate that
24 was audited here?

25 A Yes.

O'Connor - redirect - Bonomo

1550

1 Q If we could please place this exhibit side by side with
2 Government Exhibit 408H briefly. On Government Exhibit 408H
3 zoom on the entry dated April 6, 2017.

4 The audit was of a different transaction in the
5 record than the April 6 transaction we discussed earlier; is
6 that correct?

7 A That's correct.

8 Q Thank you. If we could focus again on the audit report
9 briefly.

10 If you recall from your review of this record,
11 Ms. O'Connor, did McMahon's auto response indicate that the
12 inquiry specifically related to a civil suit about a motor
13 vehicle?

14 A No.

15 Q Did McMahon's response indicate that the look-up was
16 conducted in order -- the look-up -- the database was queried
17 in order to conduct surveillance?

18 A No.

19 Q Did his response indicate that the information was passed
20 to a foreign official?

21 A No.

22 Q Or a foreign party?

23 A No.

24 MS. BONOMO: Thank you. You can remove this.

25 Q I believe Mr. Lustberg also asked you a few questions

O'Connor - redirect - Bonomo

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1 about the audit process at the Motor Vehicle Commission. Do
2 you recall those questions?

3 A Yes.

4 Q Does the Motor Vehicle Commission have the capability to
5 audit every transaction that is conducted?

6 A No.

7 Q Why is that?

8 A The unit that conducts the audits is very small. And the
9 MVC has many, many CARE customers, so it's just not feasible
10 for us to be able to audit every single transaction for every
11 single customer.

12 Q How is that the resources you just described relate to
13 the restrictions that are placed on the use of the CARE
14 database?

15 A Can you rephrase that?

16 Q Is the limited resources to audit use of the database
17 part of the reason why there are restrictions put on the use
18 of the database?

19 A Yes.

20 MS. BONOMO: No further questions.

21 THE COURT: Mr. Lustberg?

22 MR. LUSTBERG: Yes, briefly, your Honor.

23 RECROSS-EXAMINATION

24 BY MR. LUSTBERG:

25 Q Can MVC, however, audit any inquiry that it wishes to?

RIVERA - DIRECT - CHEN

1552

1 A Yes.

2 MR. LUSTBERG: That's all I have.

3 THE COURT: Thank you very much, Mr. Lustberg.

4 You are free to step down and to go. Thank you very
5 much.

6 (Whereupon, the witness was excused.)

7 THE COURT: Call your next witness.

8 MS. CHEN: The Government calls Marcus Rivera.

9 THE COURT: Come forward and remain standing so we
10 can swear you in.

11 (Witness takes the witness stand.)

12 **MARCUS RIVERA**, called as a witness, having been first duly
13 sworn/affirmed, was examined and testified as follows:

14 THE COURTROOM DEPUTY: Have a seat. State and spell
15 your name for the record.

16 THE WITNESS: Marcus Rivera, M-A-R-C-U-S,
17 R-I-V-E-R-A.

18 THE COURT: You may inquiry.

19 MS. CHEN: Thank you, your Honor.

20 DIRECT EXAMINATION

21 BY MS. CHEN:

22 Q Where do you work?

23 A I work at the United States Department of Justice,
24 Eastern District of New York.

25 Q What is your title there?

RIVERA - DIRECT - CHEN

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1 A Special Agent criminal investigator.

2 Q In connection with that role, what are some of your
3 duties and responsibilities?

4 A I investigate and help prosecute all crimes prosecuted by
5 the United States Attorney's Office, Eastern District of New
6 York.

7 Q Prior to your current role, what did you do?

8 A Before working for the Department of Justice, I was a
9 supervisory Special Agent with the U.S. Department of Labor,
10 Office of Labor Racketeering and Fraud Investigations.

11 Q Are you generally familiar with an investigation into
12 several individuals including Michael McMahon, Zhu Yong and
13 Congying Zheng?

14 A Yes.

15 Q Were you involved in that investigation?

16 A No.

17 Q In preparation for your testimony today have you reviewed
18 various documents and records collected as part of that
19 investigation?

20 A Yes.

21 MS. CHEN: May we publish what is in evidence as
22 Government Exhibit 202, please, page one, paragraph two.

23 THE COURT: Yes.

24 BY MS. CHEN:

25 Q I'll read paragraph two into the record: 403 consists of

RIVERA - DIRECT - CHEN

1554

1 a true and accurate copies of records obtained from TD Bank
2 associated with the accounts belonging to McMahon
3 Investigative Group, Michael McMahon and a Mary McMahon, and a
4 Michael T. McMahon.

5 Special Agent Rivera, are Government Exhibits 403A
6 through N, as in Nancy, subparts of Government Exhibit 403?

7 A Yes.

8 Q If we can go to paragraph three: Government Exhibit 404
9 consists of true and accurate copies of records obtained from
10 TD Bank associated with an account belonging to Transperfect
11 Language Services Inc. Government Exhibits 404A and 404B are
12 true and accurate exhibits of Government Exhibit 404.

13 In connection with your testimony here today,
14 Special Agent Rivera, did you review what has been marked for
15 identification as Government Exhibit 436?

16 A Can you repeat?

17 Q Yes. In connection with your testimony here today, have
18 you reviewed what has been premarked for identification as
19 Government Exhibit 436, which are records obtains from JP
20 Morgan Chase?

21 A Yes.

22 Q Were those kept in the ordinary course of business and
23 made at or near the time of the occurrence of the matter in
24 the records?

25 A Yes.

RIVERA - DIRECT - CHEN

1555

1 Q Is government Exhibit 436A a subpart of Government
2 Exhibit 436?

3 A Yes.

4 MS. CHEN: Your Honor, the Government moves to admit
5 Government Exhibits 403A through N, as in Nancy, 404A, 404B,
6 436A.

7 MR. LUSTBERG: No objection.

8 MR. GOLDBERGER: No objection.

9 MR. TUNG: No objection.

10 THE COURT: All of those are admitted. You may
11 publish.

12 (Government ExhibitS 403A - 403N, 404A, 404B, 436A,
13 were received in evidence.)

14 MS. CHEN: I'm going to publish another exhibit
15 already in evidence, Government Exhibit 1026, please.

16 Q If we can zoom in to the top of this, where the text
17 starts.

18 Special Agent Rivera, does this appear to be an
19 e-mail?

20 A Yes.

21 Q Who is this e-mail sent from and who is it sent to?

22 A This e-mail is sent from Transperfect Language Services
23 at TransperfectNY@gmail.com and it's sent to ZYZY996@sina.com.

24 Q Could you pull the microphone closer to you?

25 A Sure. Do you want me to repeat it?

RIVERA - DIRECT - CHEN

1556

1 Q That's okay.

2 What date was this e-mail sent?

3 A This e-mail was sent on October, Wednesday, October 0S,
4 2016. I don't know what "0S" is.

5 Q If we can go to page two. Do you see an e-mail dated
6 September 29, 2016 at 2:18 p.m.?

7 A Yes.

8 Q Who is this e-mail sent from?

9 A Emily Hsu.

10 Q What e-mail address was it sent from?

11 A From TransperfectNY@gmail.com.

12 Q Focusing on the second full paragraph, beginning: As for
13 the payment. Read that?

14 A As for the payment, the deposit for Michael is U.S.
15 dollar 5,000. It is U.S. dollar 600 for our translation
16 service. We have a policy of reconciliation of deposits and
17 expenses, and will refund any unused deposits to our clients.

18 Q Can we publish what is in evidence as Government Exhibit
19 1018. If we can zoom in a little bit.

20 Do you see where it says beneficiary's name?

21 A Yes.

22 Q What is listed after that?

23 A Transperfect Language Services Inc.

24 Q Do you see where it says beneficiary's account number
25 where there is a number sign?

RIVERA - DIRECT - CHEN

1557

1 A Yes.

2 Q What is listed after that?

3 A 4319223155.

4 Q If we could look at the bottom of this document. The
5 beneficiary's address?

6 A 136-21 Roosevelt Avenue, #210, Flushing New York, 11354,
7 U.S.A.

8 Q If we could pull up a side-by-side now and publish what
9 is in evidence as Government Exhibit 404A. Zoom in on the
10 left box.

11 Do you see writing in the upper, right-hand corner
12 of the box within this box?

13 A Yes.

14 Q What does it state?

15 A TD Bank.

16 Q What about on the right?

17 A Right, sorry. Checking deposit.

18 Q Underneath that, do you see a number?

19 A Yes.

20 Q What is that number?

21 A 5,600.

22 Q What do you understand this document to be?

23 A This is a deposit slip from TD Bank.

24 Q Do you see a date line here?

25 A Yes.

RIVERA - DIRECT - CHEN

1558

1 Q I know it's a little small, can you tell the date?

2 A Yes.

3 Q What is that?

4 A October -- it says 10-1-16.

5 Q What is listed next to name?

6 A Liu Xu.

7 Q X-U?

8 A Yes, X-U.

9 Q Next to account number, do you see the same number ending
10 in 3155 as on the exhibit on the left?

11 A Yes.

12 Q If we can zoom in on the right-hand box of Exhibit 404A.
13 Do you see three lines of writing on this box within the box,
14 I'll say?

15 A Yes.

16 Q Do you have an understanding as to what this smaller box
17 is?

18 A Yes.

19 Q What is that?

20 A It's the back of the deposit slip.

21 Q Okay. Can you read the third line, please, just the
22 first two words?

23 A Downtown Flushing.

24 Q May we publish now what is in evidence as Government
25 Exhibit 403C. Zoom in towards the top.

RIVERA - DIRECT - CHEN

1559

1 Do you see where I've noted where it says: Business
2 convenience?

3 A Yes.

4 Q Can you read those two lines, please?

5 A Business convenience checking. McMahon Investigative
6 Group.

7 Q What do you understand this document to be, Special Agent
8 Rivera?

9 A This is a bank statement for McMahon Investigative Group.

10 Q Do you see a statement period?

11 A Yes.

12 Q What is the statement period for this bank statement?

13 A October 1st, 2016 to October 31, 2016.

14 Q Is the account number associated with this statement a
15 number ending 4756?

16 A Yes.

17 Q May we publish what is in evidence as Government Exhibit
18 403B. If we could zoom in now on the second left box.

19 Does this again say checking deposit slip on the
20 upper, right-hand corner?

21 A Yes.

22 Q This is again from TD Bank; is that right?

23 A Yes.

24 Q What are the amounts listed under checking deposit?

25 A 5,000, 400, 95.

RIVERA - DIRECT - CHEN

1560

1 Q Then is there a total dollar amount underneath those
2 numbers?

3 A Yes.

4 Q What is that amount?

5 A 5,495.

6 Q Do you see a date?

7 A Yes.

8 Q What is the date?

9 A October 4, 2016.

10 Q Do you see a name listed?

11 A Yes.

12 Q What is the name?

13 A Michael McMahon.

14 Q Next to account number is this the same 4756 number we
15 were just looking at on the previous exhibit 403C?

16 A Yes.

17 Q If we could zoom out now, and zoom into the third left
18 box.

19 Just quickly, how much is this check made out for?

20 A This check is made out for \$5,000.

21 Q Can we go to the next box, the bottom left. How much is
22 this check made out for?

23 A Ninety-five dollars.

24 Q If we could go to the next page, the top left box. Do
25 those 5,000 and 95-dollar checks appear to be what is included

RIVERA - DIRECT - CHEN

1561

1 in the checking deposit slip we were looking at?

2 A Yes.

3 Q If we could zoom in on the third left box, please. When
4 is this check dated?

5 A October 1st, 2016.

6 Q Do you see something written in the upper left hand
7 corner?

8 A In the upper right-hand corner is the date October 1st,
9 2016.

10 Q Do you see where I've marked here?

11 A Yes.

12 Q Can you read that into the record?

13 A Sure. Transperfect Language Services Inc.

14 Q Who is this check made out to?

15 A McMahon Investigative Group.

16 Q Do you see a memo line that says: For?

17 A Yes.

18 Q Can you read what it listed there into the record,
19 please?

20 A Retainer fee from (paid by) Jason Zhu (a/k/a Yong Zhu)
21 and Lihua Yao.

22 MS. CHEN: For the court reporter L-I-H-U-A, Y-A-O.

23 BY MS. CHEN:

24 Q Do you see where it says account?

25 A Yes.

RIVERA - DIRECT - CHEN

1562

1 Q Is that an account number ending in 3155?

2 A Yes.

3 Q Is that account number associated with Transperfect
4 Language Services?

5 A Yes.

6 Q May we go back to Government Exhibit 403C please? Just
7 to orient the jury, is this the McMahon Investigative Group
8 bank statement we were just looking at?

9 A Did you ask me a question?

10 Q Yes. To orient the jury, is this the McMahon
11 Investigative Group bank statement we were looking at?

12 A Yes.

13 Q Can we please zoom in on where it says account summary
14 and daily account activity. Under daily account activity do
15 you see where it says deposits?

16 A Yes.

17 Q Do you see a date 10/5?

18 A Yes.

19 Q What was the amount?

20 A 5,495.

21 Q Under description what does it state?

22 A Deposit.

23 Q Is 5,495 the same amount as the checking deposit slip we
24 were just looking at?

25 A Yes.

RIVERA - DIRECT - CHEN

1563

1 Q May we publish what is in evidence as 3055, please. If
2 we could zoom in on the top.

3 Special Agent Rivera, who is this e-mail from and
4 to?

5 A From EricYan75@Yahoo.com to Investigative,
6 Mike@McMahonInvestigativeGroup.com.

7 Q When was this sent?

8 A This was sent on November 23, 2016.

9 Q Can you please read the content of this email?

10 A Hi Mike. I'll transfer \$6,000 to your account. You can
11 run the search. How long will it take to get the result?
12 Eric.

13 Q May we publish what is in evidence already as Government
14 Exhibit 403K, please. If we can zoom in to where that line is
15 on the bottom half of page one, as well as the top part of
16 page two.

17 Do you see all the way towards the bottom of this
18 call out, do you see a wire date?

19 A Yes.

20 Q What is the wire date?

21 A December 13, 2016.

22 Q Going up several lines, do you see where it says
23 originator?

24 A Yes.

25 Q What is listed next to originator?

RIVERA - DIRECT - CHEN

1564

1 A Name: Li Feng.

2 Q If you go up further where it says OBI, do you see that?

3 A Yes.

4 Q Does OBI stand for originator to beneficiary information?

5 A Yes.

6 Q What is listed next to OBI?

7 A Eric traveling fee.

8 Q If you go now towards the top, do you see beneficiary?

9 A Yes.

10 Q What is listed next to beneficiary?

11 A Michael McMahon.

12 Q Do you see where it says amount?

13 A Yes.

14 Q What is listed next to amount?

15 A 5,945.

16 Q Above amount do you see where it says account NO?

17 A Yes.

18 Q Is that a number ending in 1449?

19 A Yes.

20 Q Is that different than the account number ending in 4756
21 associated with the McMahon Investigative Group?

22 A Yes.

23 Q Can we publish now what is in evidence as Government
24 Exhibit 403D. Zoom into the top portion, please.

25 Do you see on the upper, left-hand corner where it

RIVERA - DIRECT - CHEN

1565

1 lists type of account?

2 A Yes.

3 Q What is listed next to that?

4 A Convenience checking.

5 Q Going down into the right a bit, do you see where it
6 states account relationship?

7 A Yes.

8 Q What is listed under account relationship?

9 A Joint OR 2 owners.

10 Q Going to the left side, do you see where it states
11 account titling?

12 A Yes.

13 Q What is listed under titling?

14 A Michael McMahon, Mary McMahon.

15 Q If you go down to customer one, do you see where it lists
16 a date of birth?

17 A Yes.

18 Q Is the birth year listed 1967?

19 A Yes.

20 Q We can take that down, please.

21 May we publish what is in evidence as Government
22 Exhibit 403A. Zoom into the top, please.

23 On the bottom, right-hand corner do you see where it
24 states account number?

25 A Yes.

RIVERA - DIRECT - CHEN

1566

1 Q Is that account number 1449?

2 A Yes.

3 Q Going to the left now. Do you see where it says TD
4 convenience?

5 A Yes.

6 Q Can you read what is underneath TD convenience checking?

7 A Michael McMahon, Mary McMahon.

8 Q What is listed as the statement period?

9 A November 24, 2016 to December 23, 2016.

10 Q Is that the period for this bank statement that is marked
11 as GX403A?

12 A Yes.

13 Q If we can go to the middle of this page now. Where it
14 states other credits. Do you see an entry here with the
15 posting date 12/13?

16 A Yes.

17 Q Under the description, what does it state?

18 A Wire transfer incoming. Name Li Feng, for \$5,945.

19 Q May we publish now side by side what is in evidence as
20 Government Exhibit 3072 and 3073. Zoom in on the top of 3072.

21 Agent Rivera, does this appear to be an e-mail?

22 A Yes.

23 Q Who sent and who received this e-mail?

24 A This e-mail is from Mike@McMahonInvestigativeGroup.com
25 sent to Yan Eric, EricYan75@Yahoo.com and fancysaga@Yahoo.com,

RIVERA - DIRECT - CHEN

1567

1 Fancysaga@Yahoo.com.

2 Q When was this e-mail sent?

3 A This e-mail was sent April 5, 2017.

4 Q Does there appear to be an attachment to this e-mail?

5 A Yes.

6 Q If we could go to 3073. Zoom in on the top half of this
7 document.

8 First of all, Agent Rivera, is this the attachment
9 to the e-mail we were just looking at?

10 A Yes.

11 Q Can you read under where it says bill to?

12 A Eric Yan and J. Zhu.

13 Q What is the date listed?

14 A 4/4/17.

15 Q Can you read what is under item?

16 A Investigative work.

17 Q What is listed under description?

18 A Met with Mr. Zhu in Paramus, New Jersey and received a
19 retainer fee of 5,000 cash. Case of Jin Xu.

20 Q Xu is X-U?

21 A Yes.

22 Q I think you said this document is dated April -- 4/4/17;
23 is that right?

24 A Correct.

25 Q Have you reviewed the April 2017 statements for the

RIVERA - DIRECT - CHEN

1568

1 McMahon Investigative Group business account and the Michael
2 McMahon and Mary McMahon joint checking account we were just
3 talking about?

4 A Yes.

5 Q In those statements, is there a record of a \$5,000 cash
6 deposit?

7 A No.

8 Q Can we publish what is in evidence as Government Exhibit
9 805B please, page 14 specifically.

10 THE COURT: Ms. Chen, so you'll know, we'll take our
11 morning break in five minutes.

12 MS. CHEN: I'm about to go into a new topic, if you
13 want to take break now.

14 THE COURT: Let's do that. It's 20 after 11. Let's
15 start again at 11:35.

16 Have a wonderful break. Don't talk about the case.
17 Keep an open mind. Don't do any research.

18 (Jury exits the courtroom.)

19 THE COURT: You can step down agent, just be ready
20 to go again at 11:35.

21 (Whereupon, the witness steps down.)

22 THE COURT: We'll see you in about 15, folks.

23 (Brief recess.)

24 (Continued on next page.)

25

Proceedings

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1 (In open court; 11:33 a.m.)

2 THE COURT: Have a seat, everyone.

3 Let's get our witness back here. The jury needs a
4 couple of minutes.

5 Off the record.

6 (Discussion held off the record.)

7 MR. HEEREN: Your Honor, while we wait for the
8 jury, there was some housekeeping that I can do in the front
9 of witness related to exhibits.

10 THE COURT: Okay.

11 MR. HEEREN: First, I wanted to clarify the
12 exhibits that were -- certain exhibits that were admitted by
13 the Government in the 4000 series, the record got a little
14 confused there.

15 So, for the sake of clarity, and I should say
16 that's my fault because those are the exhibits that I
17 attempted to admit. The exhibits that the Government
18 offered, and I believe were admitted, were 4004; 4006-B.
19 4007; 4008; 4010; 4011. And then 4010-A was offered by one
20 witness and the Court said the Court would reserve subject
21 to connection. And we admitted later 4010 which is where
22 4010-A comes from. And so, we would, to the extent
23 necessary, move to admit that now.

24 So those were the records admitted. And for the
25 sake of clarity, the ones that the Government did not move

Proceedings

1570

1 to admitted were 4005, 4006, and 4009. There was some
2 confusion because I read a stipulation related to all of
3 them.

4 THE COURT: So 4005, 6, and 9 of the 4000 series
5 were not admitted.

6 MR. HEEREN: I did not seek to admit them.

7 THE COURT: Just so the record is clear, does the
8 defense have any objection to any of the exhibits that the
9 Government represents they did move into evidence. And I
10 guess the question I have for you, Mr. Heeren, is why are
11 you reciting it now? You think that you didn't formally
12 move or somehow it got confusing?

13 MR. HEEREN: That's right. I think particularly
14 with 4006-B and 4007, I wasn't clear and did not formally
15 make the formal motion for admission.

16 THE COURT: Okay.

17 MR. LUSTBERG: Judge, could we get back to the
18 Court and counsel after lunch. Whenever is appropriate.

19 THE COURT: During the lunch.

20 MR. LUSTBERG: So we can take a look.

21 MR. HEEREN: Sure.

22 THE COURT: So I'm hoping that the defense wrote
23 down all those numbers and during the lunch break you can
24 let us know if you object to any of those exhibits coming
25 in.

Proceedings

1571

1 MR. HEEREN: And then the other set was Government
2 Exhibits 709-A through L were admitted through the witness
3 Vincent Quang, Q-u-a-n-g.

4 THE COURT: K-u-a-n-g.

5 MR. HEEREN: Kuang, sorry.

6 Just for whatever reason, it was not reflected in
7 the transcript or at least in our discussions with the Court
8 about what was admitted so we wanted to flag that.

9 THE COURT: Okay. So the record's clear that's
10 the same person who is known as Kuang Zebin being his first
11 name in Chinese.

12 So I'll circle back to see if any of those
13 exhibits have been formally admitted.

14 Let's go ahead and check on the jury.

15 So the other housekeeping matter, and I'll just
16 describe it generally, is I do want to check in with the
17 defense now about what tomorrow is likely to look like in
18 terms of presentation of witnesses or evidence. Because it
19 may be that we could have our jury charge conference
20 tomorrow afternoon or something like that. And then go into
21 submission summations on Wednesday.

22 Just remember there's a witness here so you can
23 say whatever you want, just keep that in mind.

24 MR. LUSTBERG: I sort of don't care. He seems
25 like a trustworthy guy.

Proceedings

1572

1 THE COURT: He's got his fingers in his ears.

2 MR. LUSTBERG: So we're waiting on one stipulation
3 that could affect that. But that aside, I think that we'll
4 probably have a few hours in the morning and then we'll be
5 done.

6 THE COURT: That's for Mr. McMahon?

7 MR. LUSTBERG: Yes, for Mr. McMahon.

8 We think there may be three witnesses. We'll
9 provide the names of a couple of them. We have been
10 provided them before, yes, to the Government later today.
11 There may be four.

12 Anyway, I'll be told who they are.

13 Anyway, so we'll be able to tell the Court at
14 lunchtime for sure. Either way it's for a full day.

15 THE COURT: For McMahon.

16 What about for Mr. Zhang or Mr. Zhu?

17 MR. GOLDBERGER: For Mr. Zhang, it will be a very,
18 very short case.

19 THE COURT: And Mr. Zhu?

20 MR. TUNG: I would have about, I think, a one-hour
21 closing.

22 THE COURT: No, not the summations but rather are
23 you going to put on any evidence.

24 We'll talk in a minute.

25 (Witness takes the witness stand.)

Rivera - Direct/Ms. Chen

1573

1 (Jury enters courtroom at 11:41 a.m.)

2 COURTROOM DEPUTY: All rise.

3 THE COURT: Please be seated, everyone.

4 You may resume your examination, Ms. Chen.

5 MS. CHEN: Thank you, your Honor.

6 EXAMINATION

7 BY MS. CHEN:

8 Q Let me please publish what's in evidence as

9 Government Exhibit 805-B, Page 14, please.

10 Special Agent Rivera, do these appear to be
11 chat messages?

12 A Yes.

13 Q And on the left side, does it state, "McMahon, Michael.
14 (914) 450-9169"?

15 A Yes.

16 Q And on the right does it state, "Johnny Zhu.
17 endlessjohnny@gmail.com"?

18 A Yes.

19 Q If you don't mind reading in blue and I'll read in gray
20 starting at April 9, 2017, 8:24 a.m.?

21 A MC, how much retaining fee you want on Monday so I can
22 prepare before I get you.

23 Q 2,000 should be okay.

24 A Yeah, I will bring it over to you today. Is that okay
25 for you?

Rivera - Direct/Ms. Chen

1574

1 Q Yes.

2 A Should be around 3:00 p.m. Where we meet?

3 Q If we could skip now to Page 15 of this same exhibit.

4 Special agent, does this appear to be a
5 continuation of the same chat?

6 A Yes.

7 Q If we could zoom in starting at April 9, 10:01 a.m.

8 A MC, can I deposit cash to your account instead of
9 driving two hours?

10 Q How do you do that?

11 A You tell me your bank and account number. I will go to
12 the branch and deposit cash to your account then take a
13 picture of the receipt. I used to do that a lot. Just like
14 you deposit your cash to your account.

15 Q Okay. If we can go to the next page.

16 TD Bank ACT number 4328775949, Michael
17 McMahon.

18 A Okay. I will do that ASAP.

19 Q Okay.

20 A Bank will be open at 11:00 a.m.

21 Q Okay.

22 A Already deposit check account after five minutes.

23 Q Okay.

24 A Has the money posted to your account MC?

25 Q Yes. All good. Thanks.

Rivera - Direct/Ms. Chen

1575

1 If we could pull up the side by side now for
2 what's been admitted as Government Exhibit 403-F.

3 If we could zoom in towards the top.

4 If we could zoom in also, sorry, Ms. McMahon,
5 on the first chat, on the left side of Exhibit 805-B.

6 Okay. On Exhibit 403-F, which is on the
7 right, do you see towards the top of this document where it
8 states "account number"?

9 A Yes.

10 Q Listed next to that, is there an account number ending
11 5949?

12 A Yes.

13 Q On the left-hand side next to type of account, what
14 does it state?

15 A TD Student Checking.

16 Q And under account titling, is there a name there?

17 A "Michael T. McMahon."

18 Q And under do you see where it says "Customer Number
19 One" towards the middle of that callout?

20 A Yes.

21 Q Do you see underneath where it says "date of birth"?

22 A Yes.

23 Q What is the date of birth year listed?

24 A It looks like it's cut off a little bit. It looks like
25 to me like 1998 but the eight looks cut.

Rivera - Direct/Ms. Chen

1576

1 Q Okay. And Special Agent Rivera, is the account number
2 listed on 403-F ending in 5949 the same as the account
3 number listed on 805-B ending in 5949?

4 A Be they have the same last four digits.

5 Q Okay. If we could go and publish what is in evidence
6 as 403-G.

7 If we could zoom in on the upper left-hand
8 box.

9 Do you see a date listed on what we're looking
10 at?

11 A Yes.

12 Q What is the date?

13 A April 9, 2017.

14 Q Is this again a deposit slip?

15 A Yes.

16 Q What is the name listed under the date?

17 A Michael McMahon.

18 Q And under the name, is there an account number ending
19 5949?

20 A Yes.

21 Q Towards the right, is there an amount listed?

22 A Yes.

23 Q What is that amount?

24 A 2,000.

25 Q Is that \$2,000. Do you see a dollar sign?

Rivera - Direct/Ms. Chen

1577

1 A Yes, I see a dollar sign. \$2,000.

2 Q Okay. And the account ending 5949, is that the student
3 checking account we were just looking at?

4 A Yes.

5 Q If we could zoom out. And now go to the bottom left
6 box.

7 Do you see the top of the box within the box
8 again.

9 Does it state "cash ticket"?

10 A Yes.

11 Q Do you see where it says "store name"?

12 A Yes.

13 Q What's listed next to store name?

14 A "50th and Broadway."

15 Q Again, towards the bottom right, do you see an amount
16 listed?

17 A Yes.

18 Q What is the amount?

19 A 2,000.

20 Q And towards the bottom of this callout, do you see
21 where it states "post date"?

22 A Yes.

23 Q What is the post date?

24 A April 10, 2017.

25 Q Okay. If we could publish now what is in evidence as

Rivera - Direct/Ms. Chen

1578

1 Government Exhibit 403-I.

2 And we could zoom in towards the top.

3 Again, do you see where towards the middle
4 this callout it says "TD Student"?

5 A Yes.

6 Q Could you read what it states there?

7 A "TD Student Checking, Michael T. McMahon."

8 Q Towards the right-hand side of this callout, is there
9 an account number listed ending in 5949?

10 A Yes.

11 Q Towards the top of this callout, do you see where it
12 says, "statement period"?

13 A Yes.

14 Q What is the statement period listed?

15 A March 24, 2017, to April 23, 2017.

16 Q If we could zoom out and now zoom in to the portion of
17 the page, section, called "Daily Account Activity."

18 Do you see where it says "posting date" in
19 this callout?

20 A Yes.

21 Q Do you see a posting date of 4/10?

22 A Yes.

23 Q What is the amount for that entry?

24 A 2,000.

25 Q And what is the description for that entry?

Rivera - Direct/Ms. Chen

1579

1 A Deposit.

2 Q Okay. May we publish now what is in evidence as 805-B,
3 as in boy, Page 14 again.

4 Sorry, this is actually the wrong page. If we
5 could go to, I think Page 27.

6 Sorry, go back a couple pages. Looking for
7 April 10th, 11:27 a.m.

8 There we go.

9 So, Agent Rivera, is this the same chat
10 communication we were looking at earlier between McMahon,
11 Michael and Johnny Zhu?

12 A Yes.

13 Q Okay. Beginning at the April 10, 2017, 1:13 p.m.
14 entry. If you don't mind reading in blue, I'll read in
15 gray.

16 Still quite here. What's the plan for
17 tomorrow?

18 A We start on 7:00 a.m. tomorrow. TMR?

19 Q Okay. Need more money then.

20 A The balance can't cover TMR?

21 Q Does it say, "The balance can't even cover TMR"?

22 A The balance can't even cover TMR. Disconnected. Call
23 me when you are available.

24 Q Balance would cover only two hours for tomorrow.

25 If we could go to Page 29.

Rivera - Direct/Ms. Chen

1580

1 Is this a continuation of the same chat?

2 A Yes.

3 Q And if you don't mind reading, starting at April 10,
4 2017, at 10:13 p.m.

5 A Yeah. MC can you PLZ start monitored TMR on 8:00 a.m.

6 I will deposit money to you before 9:00 a.m.

7 Q Yes. I'll be there at 8:00 a.m.

8 A Morning MC. I'm on my way to TDBank. Are you in
9 position?

10 Q Just to be clear the text you read was that on
11 April 11th, now?

12 A Yes.

13 Q Okay. The chat continues.

14 Yes, thanks.

15 If we could go to the next page. If you don't
16 mind reading from the top?

17 A Already deposit 1K.

18 Q Great. Thanks. We can take that down.

19 Can we publish now what is in evidence as
20 Government Exhibit 403-H, the top left box.

21 Do you see the date listed here?

22 A Yes.

23 Q What is the date?

24 A April 11, 2017.

25 Q What is listed next to "name"?

Rivera - Direct/Ms. Chen

1581

1 A Michael McMahon.

2 Q Okay. And is this again a deposit slip?

3 A Yes.

4 Q Is this for an account number ending 5949?

5 A Yes.

6 Q Is that 5949 account associated with the student
7 checking account we were looking at earlier?

8 A Yes.

9 Q What is the amount listed on this deposit slip?

10 A \$1,000.

11 Q If we could go now to the bottom-left box in this
12 exhibit.

13 Okay. And, again, at the top, does it say,
14 "Cash ticket"?

15 A Yes.

16 Q Next do you see where it says "store name" on this
17 callout?

18 A Yes.

19 Q What is written next to store name?

20 A It's a little difficult to read.

21 Q Zoom in a little bit further.

22 A Thank you.

23 Q There we go.

24 A Looks like the letter after A is chopped off. It looks
25 like a-burn-dale, New York. Auburndale, New York.

Rivera - Direct/Ms. Chen

1582

1 Q If we could zoom out again just do see this box.

2 And, again, what is the amount listed here in
3 the bottom-right corner.

4 A \$1,000.

5 Q And what is the post date listed in this callout?

6 A April 11, 2017.

7 Q If we can now flip to Government Exhibit 403-I in
8 evidence.

9 If we can zoom into the top. And, again, just
10 to orient the jury.

11 Is this the TD Student Checking account for
12 Michael T. McMahon?

13 A Yes.

14 Q If we could go to daily account activity. Do you see
15 an entry here listed 4/11?

16 A Yes.

17 Q What is that amount?

18 A \$1,000.

19 Q And what's under description for this entry?

20 A Deposit.

21 Q And to you see a subtotal in this callout?

22 A Yes.

23 Q And what is that subtotal?

24 A 3,000.

25 Q If we could go to Government Exhibit 403-J, please.

Rivera - Direct/Ms. Chen

1583

1 Again, if we could zoom in to the top.

2 Special Agent Rivera, is that, again, a
3 statement for the TD Student Checking account for Michael T.
4 McMahon?

5 A Yes.

6 Q That is for account ending 5949?

7 A Yes.

8 Q If you could, do you see statement period on the upper
9 right?

10 A Yes.

11 Q What is the statement period for this exhibit?

12 A April 24, 2017 to May 23, 2017.

13 Q And was the last exhibit we were looking at, 403-I, for
14 the statement period ending April 23, 2017.

15 A Can you repeat that?

16 Q Sure.

17 Is Government Exhibit 403-I, which is the
18 exhibit we were just looking at, for the statement period
19 ending April 23, 2017?

20 A Yes.

21 Q If we can go to the bottom of Page 1 here. Do you see
22 a section titled "Electronic Payments"?

23 A Yes.

24 Q You could blow that up.

25 Do you see an entry dated 04/28?

Rivera - Direct/Ms. Chen

1584

1 A Yes.

2 Q What is the amount for that entry?

3 A 3,000.

4 Q And under description, what does that entry read?

5 A "Electronic PMT - Web Chase credit, CRD Epay."

6 Q And then are there some numbers listed?

7 A Yes.

8 Q Can we blow up side by side Government Exhibit 436-A.

9 If we could zoom in to the top of this
10 exhibit.

11 Special Agent Rivera, does Exhibit 436-A
12 appear to be a Chase statement?

13 A Yes.

14 Q And do you see two names listed in the middle of the
15 callout here?

16 A Yes.

17 Q What are those names?

18 A Mary M. McMahon and Michael McMahon.

19 Q If we could go to the bottom portion of 436-A. Bottom
20 portion of Page 1. Yes, where it says "account activity,"
21 if you could blow that up.

22 Do you see "payments and other credits" under
23 this heading?

24 A Yes.

25 Q Do you see an entry dated 04/28?

Rivera - Direct/Ms. Chen

1585

1 A Yes.

2 Q What is the amount of that entry?

3 A 3,000.

4 Q Is there some text in the middle of this entry?

5 A Yes.

6 Q What does that text say?

7 A Payment Thank You - Web.

8 Q If we could just blow up -- I'm sorry, Ms. McMahon --
9 if we could blow up on 403-J, the electronic payments
10 portion we were just looking at.

11 Does the electronic payment for the entry
12 dated 04/28 and the payment and other credits entry dated
13 04/28 have the same amount?

14 A Yes.

15 Q What's that amount?

16 A 3,000.

17 Q Could we publish now what is in evidence as
18 Government Exhibit 3075.

19 If we could just zoom in at the top.

20 Again, what is this -- does this appear to be
21 an e-mail?

22 A Yes.

23 Q And who is this e-mail from and to?

24 A This e-mail is from Yan, Eric. Ericyan75@yahoo.com.
25 It's to Investigative. Mike@mcmahoninvestigativegroup.com.

Rivera - Direct/Ms. Chen

1586

1 Q Okay. And what is the date of this e-mail?

2 A April 25, 2017.

3 Q Can you read the content of this e-mail beginning with,
4 "Please."

5 A Please resend your account to me again. I'll transfer
6 200 USD to you. Would you please give me the information as
7 soon as you can. The money transfer may be cost a week but
8 we can't wait so long time. Thanks, Eric.

9 Q Can we publish what is in evidence as
10 Government Exhibit 403-K now.

11 If we could go to Page 2.

12 And this record spans Page 2 and 3, so if we could
13 callout the bottom of Page 2 and the top of Page 3.

14 I think we're fixing the exhibit so everyone is...

15 THE COURT: Okay.

16 (A brief pause in the proceedings was held.)

17 Q Can you see that, Agent Rivera?

18 A Yes.

19 Q And starting with the bottom here. Do you see where it
20 says "wire date"?

21 A Yes.

22 Q What's the wire date?

23 A 4/27/2017.

24 Q Then moving up. Do you see where it says "originator"?

25 A Yes.

Rivera - Direct/Ms. Chen

1587

1 Q What is listed next to originator?

2 A He Sheng.

3 Q Is that spelled H-e S-h-e-n-g?

4 A Yes.

5 Q Moving up farther, do you see where it says "INS
6 amount"?

7 A Yes.

8 Q What's the amount listed?

9 A 200.

10 Q Going up to "beneficiary." Do you see that?

11 A Yes.

12 Q Who is listed in next to beneficiary?

13 A Michael McMahon.

14 Q And going further up, do you see an Account No?

15 A Yes.

16 Q Is that a number ending 1449?

17 A Yes.

18 Q If we could publish what is in evidence as
19 Government Exhibit 403-L.

20 If we could zoom in towards the top.

21 And if you could read where it's marked that
22 starts with TD Convenience Checking?

23 A Michael McMahon, Mary McMahon.

24 Q And towards the right, do you see where it says
25 "account number"?

Rivera - Direct/Ms. Chen

1588

1 A Yes.

2 Q And is that an account number ending 1449?

3 A Yes.

4 Q And, again, where it says "statement period," do you
5 see a date range next to that?

6 A Yes.

7 Q And what is the statement period?

8 A April 24, 2017 to May 23, 2017.

9 Q Okay. If we could go down now to the section titled
10 "Other Credits" on the same page.

11 Do you see under "Posting Date" where it lists
12 04/27?

13 A Yes.

14 Q And what is the amount for this entry?

15 A 200.

16 Q And under description, what does it state?

17 A Wire transfer incoming, He Sheng.

18 Q Okay. We can take this exhibit down.

19 Special Agent Rivera, over the course of your
20 testimony and your review of the records, have we been
21 looking at several bank transactions and invoices beginning
22 in October 2016 through April 2017.

23 A Yes.

24 Q Did you, in fact, add up the totals from these
25 transactions?

Rivera - Direct/Ms. Chen

1589

1 A Yes.

2 MS. CHEN: Your Honor, at this time, may we
3 publish a demonstrative that we put together?

4 THE COURT: The defense has seen that, correct?

5 MS. CHEN: Yes, your Honor.

6 THE COURT: Okay. Go ahead.

7 Q If we could just blow up the chart portion, yes.

8 THE COURT: Just for the jury's benefit,
9 demonstrative exhibits are not evidence, and so, they won't
10 be sent back to the jury room with you. Rather, they're an
11 organization by the Government of certain evidence that they
12 want to show you at this time.

13 Q Special Agent Rivera, does this chart reflect the
14 transactions we've just been talking about today?

15 A Yes.

16 Q And does this chart reflect your review of the records
17 as well?

18 A Yes.

19 Q If you don't mind just very briefly walking the jury
20 through the different columns reflected in this chart?

21 A Sure. The first two columns are "date" and "date
22 posted." The date is the date of the transaction. The date
23 posted is the date that it would have hit one of the
24 accounts. Then there is the amount, dollar amount. There's
25 the type which is how the money was transferred, whether it

Rivera - Direct/Ms. Chen

1590

1 was check or wire transfer or cash. Then there is the payer
2 of the account number, that's the person making the payment
3 to from -- to the account number.

4 Then there is the payer account name which is the
5 to account name. And then there's the receiver account
6 number, which is the -- self-explanatory -- from, I'm sorry,
7 the that's the "to account," the first one is the "from
8 account." So the receiver account number names would be the
9 ones we just went over the, McMahon Investigative Group.
10 The joint one with Michael and Mary and the student one for
11 Michael T. McMahon.

12 And then notes would be any notes whether in the
13 check memo or in the OBI, or in the invoice description.
14 Then the source would be the evidence number.

15 Q I'm going to direct you towards the bottom of this
16 chart.

17 Do you see where it states "total"?

18 A Yes.

19 Q And what is the total amount listed there?

20 A \$19,145.

21 Q Okay.

22 MS. CHEN: Your Honor, may I publish what is in
23 evidence as Government Exhibit 202? This is a stipulation.

24 THE COURT: You may.

25 MS. CHEN: Specifically, I want to go to Page 2,

Rivera - Direct/Ms. Chen

1591

1 Paragraphs 14 and 15.

2 I'm reading Paragraph 14.

3 Government Exhibit 432 is a true and accurate copy
4 of tax returns filed by Michael McMahon and the Mary Martha
5 McMahon for fiscal year of 2016.

6 Reading Paragraph 5.

7 Government Exhibit 433 is a true and accurate
8 copies of tax returns filed by Michael McMahon and Mary
9 Martha McMahon for the fiscal year 2017.

10 Q Special Agent Rivera, are Government Exhibits 432-A and
11 433-A subparts of Government Exhibits 432 and 433
12 respectively?

13 A Yes.

14 MS. CHEN: Your Honor, the Government moves to
15 admit Government Exhibits 432-A and 433-A.

16 MR. LUSTBERG: No objection.

17 MR. GOLDBERGER: No objection.

18 MR. TUNG: No objection.

19 THE COURT: Admitted you can publish.

20 (Government's Exhibits 432-A and 433-A were marked
21 in evidence.)

22 Q If we could start with 432-A. If we could zoom in
23 towards the top.

24 Special Agent Rivera, is this a tax return for
25 fiscal year 2016.

Rivera - Direct/Ms. Chen

1592

1 A Yes.

2 Q And do you see where it states first name and initial
3 towards the upper left?

4 A Yes.

5 Q What's listed under there?

6 A Michael and Mary Martha McMahon.

7 Q I'm going to direct you now to towards the middle of
8 the page, the section stating "income."

9 Do you see that?

10 A Yes.

11 Q Do you see an Item Number 12?

12 A Yes.

13 Q Do you see towards the left-hand portion there's a
14 description of Item 12?

15 A Yes.

16 Q Can you read that please?

17 A "Business income" or in parenthesis "loss." "Attach
18 Schedule C or C-EZ."

19 Q Is loss in parenthesis?

20 A Yes.

21 Q Do you have an understanding as to why it's in
22 parenthesis?

23 A Yes.

24 Q What is that understanding?

25 A Usually, negative amounts are put in parenthesis.

Rivera - Direct/Ms. Chen

1593

1 Q Okay. And towards the right, do you see a
2 corresponding number for Item 12?

3 A Yes.

4 Q And what is that number?

5 A 22,172.

6 Q And the description, I believe you read. It says,
7 "Attach Schedule C." Is that right?

8 A Yes.

9 Q Can we go to Page 4, please.

10 Do you see on the upper-left portion of this page
11 does it say Schedule C.

12 A Yes.

13 Q And what is the header at the top of this page?

14 A "Profit or Loss from Business."

15 Q And is this again for fiscal year 2016?

16 A Yes.

17 Q Under "business name," do you see where it says that
18 under next to C?

19 A Yes.

20 Q What is listed under business name?

21 A "McMahon Investigative Group."

22 Q Do you see the portion of this page where it says,
23 "Part Roman I, Income."

24 A Yes.

25 Q I'm going to direct you to Item 5 of this section.

Rivera - Direct/Ms. Chen

1594

1 Do you see that?

2 A Yes.

3 Q Can you read what it says next to Item 5?

4 A "Gross Profit, Subtract Line 4 from Line 3."

5 Q And all the way towards the right-hand portion of this
6 callout, do you see a number that corresponds next to
7 Item 5?

8 A Yes.

9 Q And what is that number?

10 A 40,734.

11 Q Okay. Let me publish now what is in evidence as
12 Government Exhibit 433-A. We can zoom in towards the top.

13 And is this similarly a tax return for fiscal year
14 2017.

15 A Yes.

16 Q And, again, do you see a name associated with this
17 return?

18 A Yes.

19 Q What's the name listed?

20 A Michael and Mary Martha McMahon.

21 Q Okay. And if we could again scroll down to the income
22 section.

23 And do you see again is Item 12 business income?

24 A Yes.

25 Q And if you look all the way to the right, is that a

Rivera - Direct/Ms. Chen

1595

1 number associated with Item 12?

2 A Yes.

3 Q What's that number?

4 A 9,724.

5 Q And does this similarly state, "Attach Schedule C"?

6 A Yes.

7 Q Okay. If we could go to Page 4 of this exhibit?

8 And on the top left-hand corner, do you see it
9 states, "Schedule C"?

10 A Yes.

11 Q And, again, what's the header of this page, rather?

12 A Profit or loss from business.

13 Q And is this similarly for fiscal year 2017?

14 A Yes.

15 Q And under Item C where it says, "Business Name," do you
16 see that?

17 A Yes.

18 Q And what's listed under business name?

19 A McMahon Investigative Group.

20 Q Okay. Turning now again to Part 1 with the section
21 heading "Income."

22 Do you see Item 5 under this section?

23 A Yes.

24 Q What does it say next to Item 5?

25 A "Gross profit."

Rivera - Direct/Ms. Chen

1596

1 Q And what is the number listed next to Item 5?

2 A 46,898.

3 MS. CHEN: May I publish just for the witness and
4 counsel what has been premarked for identification as
5 Government Exhibit 452.

6 THE COURT: Yes. If we could zoom in towards the
7 top half of this page.

8 Q Special Agent Rivera, do you recognize this exhibit?

9 A Yes.

10 Q Is this exhibit a summary exhibit?

11 A Yes.

12 Q Does Government Exhibit 452 fairly and accurately
13 summarize the information included in Government
14 Exhibits 403-M, 403-N, 432-A, and 433-A, all of which have
15 already been admitted.

16 A Yes.

17 MS. CHEN: Your Honor, the Government offers
18 Exhibit 452.

19 MR. LUSTBERG: No objection.

20 MR. GOLDBERGER: No objection.

21 MR. TUNG: No objection.

22 THE COURT: Admitted. You may publish.

23 (Government's Exhibit 452 was marked in evidence.)

24 Q Special Agent Rivera, can you see this?

25 A Yes.

Rivera - Direct/Ms. Chen

1597

1 Q Can you explain what the first see kind of four
2 blue-and-white rows are of this exhibit?

3 A Yes. These are the total deposits for the McMahon
4 Investigative Group accounts for 2016 and 2017.

5 Q Just to be clear, when you say "2016 and 2017," does
6 that cover kind of the blue charts that we see on this
7 exhibit?

8 A Yes.

9 Q Okay. And, again, is that McMahon Investigative Group
10 account the number ending 4756?

11 A Yes.

12 Q And does each column reflect a month, kind of, starting
13 at the second column all the way to the second-to-last
14 column on the right?

15 A Yes.

16 Q And did you total up the deposits and electronic
17 deposits for all of those months according to the bank
18 statements you reviewed?

19 A Yes.

20 Q What were the total -- what was the total deposit
21 amount for 2016 for the McMahon Investigative Group business
22 account?

23 A 56,001.39.

24 Q What was the gross profit listed for the McMahon
25 Investigative Group on Schedule C of the 2016 tax return we

Rivera - Direct/Ms. Chen

1598

1 were just looking at?

2 A 40,734.

3 Q Which is greater --

4 MR. LUSTBERG: Objection.

5 THE COURT: Sustained.

6 Q Can we do a top-and-bottom side-by-side with the
7 demonstrative we were just looking at.

8 If we could just zoom in on 2016. Okay.

9 And if we could zoom in on the top two rows of
10 the demonstrative. Top three rows, sorry.

11 Do you see two rows in the demonstrative dated
12 October 2016 and December 2016?

13 A Yes.

14 Q For the October 2016 entry, was that transaction
15 received into the McMahon Investigative Group account?

16 A October?

17 Q That's right.

18 A Yes.

19 Q Okay. Therefore, would that amount be reflected in the
20 chart that you created what we're looking at on the top of
21 this screen?

22 A Yes.

23 Q For the December 2016 transaction that's listed on the
24 bottom callout, do you see that?

25 A Yes.

Rivera - Direct/Ms. Chen

1599

1 Q For the December 2016 transaction, was that transaction
2 received into the McMahon Investigative Group business
3 account?

4 A No.

5 Q Would that December 2016 transaction be reflected in
6 the upper callout the deposits made into the business
7 account?

8 A No.

9 Q How much was the December 2016 transaction -- what was
10 the amount for the December 2016 transaction?

11 A 5,945.

12 Q Is that U.S. Dollars?

13 A Yes, dollars.

14 Q If we could now call out on the top exhibit just the
15 2017 portion.

16 And if we could call out on the bottom
17 demonstrative the last four rows. That's five rows,
18 actually.

19 Do you see on the demonstrative which is the
20 bottom callout four rows listing transactions in 2017?

21 A Yes.

22 Q Were those all made in April of 2017?

23 A Yes.

24 Q Were any of those transactions received into the
25 McMahon business account?

Rivera - Cross/Mr. Lustberg

1600

1 A No.

2 Q Would any of those transactions be reflected in the
3 46,229 total deposit for 2017 in the top summary exhibit?

4 A No.

5 MS. CHEN: May I have one moment, your Honor.

6 THE COURT: Yes.

7 (A brief pause in the proceedings was held.)

8 MS. CHEN: No further questions, your Honor.

9 THE COURT: Thank you.

10 Cross-examination.

11 MR. LUSTBERG: Thank you, your Honor. The.

12 CROSS-EXAMINATION

13 BY MR. LUSTBERG:

14 Q Good afternoon, Special Agent Rivera. Just a couple of
15 questions.

16 Were you asked to compile any information
17 whatsoever with regard to Mr. McMahon's business expenses?

18 A No.

19 Q So we don't have a spreadsheet that shows what the
20 business expenses that McMahon Investigative had were?

21 A No.

22 Q And, by the way, are you a tax expert?

23 A No.

24 Q Okay. But you know that when compiling business tax
25 information because it talks about profit, that profit is

Rivera - Cross/Mr. Lustberg

1601

1 both income and expenses, right?

2 MS. CHEN: Objection.

3 THE COURT: Sustained.

4 Q You've testified with regard to an account in the name
5 of Michael T. McMahon.

6 Do you know what Michael T. McMahon is?

7 A No.

8 Q You don't know that Michael T. McMahon is the son of
9 defendant Michael McMahon?

10 A I do now.

11 Q You do because of my question?

12 A Yes.

13 Q Okay. But up until I asked you that question, you had
14 no idea?

15 THE COURT: Sustained.

16 Remember questions are not evidence. So let's
17 move on, he said he didn't know.

18 (Continued on the next page.)
19
20
21
22
23
24
25

Rivera - cross - Lustberg

1602

1 MR. LUSTBERG: Just one last question, if we can
2 just quickly call up Exhibit 403K, which is in evidence.

3 CROSS-EXAMINATION

4 BY MR. LUSTBERG: (Continuing)

5 Q This exhibit is called payment archive and research
6 center, correct?

7 A Yes.

8 Q Do you know if this information goes to -- withdrawn. Do
9 you see where it says beneficiary Mary Martha McMahon?

10 A Yes.

11 Q Do you know whether Mary Martha McMahon or anybody
12 associated with the accountholder gets this payment archive
13 and research center query results report?

14 A I don't know.

15 Q We have looked at some account statements and you know
16 that those kinds of account statements go to the recipient,
17 the accountholder; correct?

18 A Yes.

19 Q But you don't know whether this document goes to an
20 accountholder; correct?

21 A I don't know that.

22 MR. LUSTBERG: I have nothing further, Your Honor.

23 THE COURT: Thank you, Mr. Lustberg.

24 Mr. Tung?

25 MR. TUNG: Just a couple.

Rivera - cross - Tung

1603

1 THE COURT: All right.

2 MS. CHEN: Your Honor, the Government is going to
3 assist Mr. Tung with his examination in terms of exhibits.

4 THE COURT: Thank you very much to the Government,
5 specifically Paralegal Ms. McMahon.

6 Go ahead, Mr. Tung.

7 MR. TUNG: Can we show the witness Government
8 Government Exhibit 1018?

9 THE COURT: In evidence; correct?

10 MR. TUNG: It is in evidence, yes.

11 THE COURT: Go ahead.

12 MS. CHEN: Is there a portion of the exhibit you
13 would like zoomed in, Mr. Tung?

14 CROSS-EXAMINATION

15 BY MR. TUNG:

16 Q Sir, did you examine this document before, before giving
17 your testimony today?

18 THE COURT: This is Government Exhibit 1018.

19 A I think so. I don't remember. I did examine a lot of
20 documents. I don't remember if this one specifically is one
21 of them.

22 Q And isn't that true that the -- it says the beneficiary
23 name is Transperfect Language Services, Inc. for the account
24 ending with 31?

25 THE COURT: Ms. McMahon, perhaps you can blow it up.

Rivera - cross - Tung

1604

1 Q 3155, that account, the beneficiary name is Transperfect
2 Language Services; right?

3 A Yes.

4 MR. TUNG: Can we show the witness Government
5 Exhibit 404A, I believe. A.

6 Q Now, that is a deposit slip; right?

7 A Yes.

8 Q And that shows on and about October 2016 -- it's actually
9 October 3rd, right, 2016, there is an amount of \$5,600 that
10 were deposited into this account; right?

11 A Yes.

12 Q And that account bears the same account number which in
13 the previous exhibit which was entitled beneficiary account,
14 the beneficiary name on that account is Transperfect
15 Translation Services, right?

16 A Yes.

17 THE COURT: Mr. Tung, I'm sorry to interrupt you,
18 just to go back for a minute -- and this is really a question
19 for the Government -- I think the witness previously said that
20 the person identified in the document on the left side was
21 Liua Xu, but I think it actually says Lina Xu, L-I-N-A.

22 THE WITNESS: Yes. I think it's L-I-N-A, not
23 L-I-U-A. So you're correct, Your Honor.

24 THE COURT: But let me ask the witness. Do you
25 agree that it actually is L-I-N-A?

Rivera - cross - Tung

1605

1 THE WITNESS: I do.

2 THE COURT: All right. Just so the record is clear.

3 Q Do you know the relationship between Lina Xu and Transfer
4 -- Perfect Translation Services?

5 A No, I don't know.

6 Q But it has the same bank account number; right?

7 A Yes.

8 Q Remember you also seen earlier, when you giving your
9 testimony, that the 5,600 that was split in two payments,
10 right, one was \$5,000 to be paid as a retainer to Detective
11 McMahon and the other \$600 was paid to Transperfect
12 Translation Services, right? Did you see that e-mail?

13 A Yes, I remember it.

14 Q And the question is: When you look at -- when you review
15 those documentations, did you see that Mr. Yong Zhu's name
16 occurring anywhere in that transaction for the \$5,600
17 transaction?

18 A I don't remember seeing his name in those documents.

19 Q So the money received from China for \$5,600 that was paid
20 to Transperfect Translation Services and then it was split
21 \$600 goes into Transperfect Translation Services and the
22 \$5,000 goes to private detective McMahon? Mr. Zhu Yong was
23 not part of this; right?

24 A I don't know if he is part of it or not, but I don't
25 remember seeing his name in any of the documents.

Proceedings

1606

1 MR. TUNG: Thank you.

2 THE COURT: Thank you, Mr. Tung.

3 Any redirect?

4 MS. CHEN: No, Your Honor.

5 THE COURT: So you're free to go. Thank you.

6 (Witness steps down.)

7 THE COURT: Call your next witness, the Government.

8 MR. HEEREN: Yes, Your Honor. The Government has a
9 video that it wants to publish pursuant to stipulation.

10 THE COURT: All right.

11 MR. HEEREN: Ms. McMahon, if you can please put up
12 what has been marked admitted into evidence at Government
13 Exhibit 203 at paragraph 8.

14 And paragraph 8 of Government Exhibit 203, which has
15 been previously admitted, reads: Government Exhibit 506 is an
16 envelope addressed to Mr. Bai Xu, B-A-I, Xu, X-U at 335 Long
17 Hill Drive, Short Hills, New Jersey, NJ, 07078, U.S.A. from Xu
18 Qin, X-U, Q-I-N, seized by a law enforcement agent at or
19 around 335 Long Hill Drive, Short Hills, New Jersey, on or
20 about April 23, 2019. And then an item and invoice number is
21 given.

22 Government Exhibit 506A is a DVD that was contained
23 inside Government Exhibit 506 seized by a law enforcement
24 agent at or around 335 Long Hill Drive, Short Hills, New
25 Jersey, on or about April 23, 2019.

Proceedings

1607

1 Government Exhibit 506B consists of true and
2 accurate photographs taken of Government Exhibits 506 and 506A.

3 Paragraph 9, please, Ms. McMahon.

4 Government Exhibits 506D and 506E are videos
5 contained on Government Exhibit 506A.

6 Government Exhibit 506F is a true and accurate
7 screen shot taken from Government Exhibit 506D.

8 Government Exhibit 506C consists of an accurate
9 Chinese to English language translation of texts observed on
10 Government Exhibit 506D and -- it's a typo -- and accurate
11 Chinese to English language translation transcript of
12 Government Exhibit 506E.

13 Your Honor, at this time the Government would move
14 to admit Government Exhibit 506G, which is the video
15 identified as Government Exhibit 506D, with the translation
16 references as 506C attached as subtitles to the video.

17 THE COURT: So we are just talking about 506G?

18 MR. HEEREN: Correct.

19 THE COURT: Any objection?

20 MR. LUSTBERG: No, Your Honor.

21 MR. GOLDBERGER: Yes, I would object as to relevance
22 as to my client.

23 MR. TUNG: No.

24 THE COURT: Let's have quick a sidebar. (Continued
25 on next page.)

Sidebar

1608

1 (The following occurred at sidebar.)

2 THE COURT: Mr. Heeren, remind me, this is a
3 videotape of what?

4 MR. HEEREN: So this is one of the two videos that
5 was sent to the victims at the same -- in the same course of
6 mailings that they previously testified about.

7 THE COURT: With the letters?

8 MR. HEEREN: Correct. It's not in the same
9 mailings. If you recall, they testified about a series of
10 mailings.

11 THE COURT: Right. And there was a CD?

12 MR. HEEREN: Correct. They testified about the CD.
13 This is the one of the two videos contained on the CD.

14 THE COURT: And Mr. Goldberger, your objection is
15 it doesn't relate to your client directly?

16 MR. GOLDBERGER: Yes, number one. And number two,
17 there is no connection to my client being involved in the
18 sending of this or having anything to do with the video in any
19 way, shape or form.

20 THE COURT: I'm overruling the objection.

21 Obviously the Government is offering it not as
22 direct evidence as to your client but as to evidence of the
23 harassment campaign they allege was undertaken by the Chinese
24 Government.

25 MR. HEEREN: For the sake of clarity of the exhibit

Sidebar

1609

1 record, the actual DVD that contains videos was admitted into
2 evidence already. This is just that video with the English
3 language transcript.

4 THE COURT: Okay. An excerpt of it or the full DVD?

5 MR. HEEREN: It's the full -- it was a video file on
6 the DVD. It's a full video file, which is four minutes and I
7 think around 30 seconds.

8 THE COURT: All right. You can play it now.

9 (End of sidebar conference.)

10 (Continued on next page.)
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Proceedings

1610

1 (In open court.)

2 THE COURT: So the objection was overruled. You can
3 play the video.

4 (Video playing.) (Video stopped.)

5 MR. HEEREN: Thank you, Your Honor.

6 THE COURT: Thank you, Mr. Heeren.

7 Does the Government want to call another witness
8 now?

9 MR. HEEREN: Yes, Your Honor.

10 MS. ARFA: The Government calls Elaina Graff.

11 Your Honor, may I take a moment to set up the
12 courtroom.

13 THE COURT: Yes. And bear in mind that you have
14 about 15 minutes after you do that before our lunch break.

15 Ms. Graff, if you will come up here and approach the
16 witness box. Please remain standing for a moment so we can
17 swear you in.

18 THE COURTROOM DEPUTY: Please raise your right hand.
19 (Witness sworn.)

20 THE COURTROOM DEPUTY: Thank you. Have a seat.
21 Please state and spell your name for the record.

22 THE WITNESS: My name is Elaina Graff. E-L-A-I-N-A.
23 My last name is spelled G-R-A-F-F.

24 THE COURT: Okay. You may inquire whenever you're
25 ready, Ms. Arfa.

Graff - direct - Arfa

1611

1 MS. ARFA: Just one moment, Your Honor.

2 THE COURT: Okay.

3 **ELAINA GRAFF,**

4 called as a witness, having been duly

5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. ARFA:

8 Q Good morning.

9 A Good morning.

10 Q Where do you currently work?

11 A I currently work for the Fort Collins Police Services
12 assigned to the Northern Colorado Regional Forensics
13 Laboratory.

14 Q What is your title?

15 A I'm an analyst in the latent print section.

16 Q For how long have you worked there?

17 A Approximately two years.

18 Q Where did you work previously?

19 A Before that, I worked for the Federal Bureau of
20 Investigations laboratory in Quantico, Virginia.

21 Q Were you in a particular section there?

22 A I worked for the latent print operation unit.

23 Q And what was your title while you were there?

24 A I was a physical scientist forensic examiner.

25 Q What were your duties as a physical scientist forensic

Graff - direct - Arfa

1612

1 examiner?

2 A I receive and inventory items of evidence. I then
3 process that evidence for the development of latent prints.

4 If I develop latent prints that are suitable for
5 comparison, I will compare them against submitted known names
6 or launch them in our database if they are appropriate.

7 THE COURT: Just remember to go a little slower for
8 our court reporter and our translator.

9 Q Ms. Graff, I am going to ask you to pull the microphone a
10 little bit closer to you as well.

11 A Is that better?

12 Q Yes. Thank you.

13 A When I conclude my exams, I write a report of my findings
14 and testify in court when asked to do so.

15 Q For how long were you an FBI physical scientist forensic
16 examiner with the latent print section?

17 A Approximately 14 years.

18 Q Were you an FBI forensic examiner for latent prints in
19 October 2018?

20 A I was.

21 Q Is the FBI lab at which you worked accredited?

22 A It is.

23 Q Would you please tell us about your educational
24 background?

25 A I have a Bachelor of Arts in history from Utah State

Graff - direct - Arfa

1613

1 University and a Master's of forensic science from Nebraska
2 Wesleyan University.

3 Q And could you please describe your training and your
4 experience in the area of fingerprints?

5 A When I started at the FBI, I completed an 18-month
6 training program in which I learned how to process evidence
7 for latent prints, how to compare those prints and how to
8 launch them in the database.

9 I worked for a year under a mentor and completed a
10 three-day qualification exam.

11 While I was at the FBI, I continued -- I had
12 continuing education with both internal and external trainers.
13 And then when I left to go to Colorado, I did two months of
14 training there learning their quality assurance programs and
15 completed a competency examine.

16 Q Were you qualified by the FBI as a forensic examiner?

17 A I was.

18 Q When was that?

19 A In 2009.

20 Q Did you receive any FBI training subsequent to your
21 initial qualification?

22 A Yes, I had additional training every year.

23 Q Were you required to perform yearly proficiency exams?

24 A I am.

25 Q And have you passed all of them?

Graff - direct - Arfa

1614

1 A I have.

2 Q Do you participate in any professional associations
3 relating to fingerprints?

4 A I am a member of the International Association for
5 Identification, which is our professional body. I -- when I
6 was in Virginia, I belonged to the Chesapeake Bay division of
7 that body. And now that I'm in that Colorado, I belong to the
8 Rocky Mountain division and act as their historian.

9 Q Over the course of your career, approximately how many
10 latent print comparisons have you performed?

11 A Thousands.

12 Q Have you ever testified in court as an expert in latent
13 print examinations?

14 A I have been qualified as an expert 11 times.

15 Q Has a court ever declined to qualify you as an expert?

16 A No.

17 MS. ARFA: Your Honor, at this time the Government
18 moves, pursuant to Federal Rule of Evidence 702, to qualify
19 Elaina Graff as an expert in the field of latent print
20 examination and comparison.

21 MR. TUNG: No objection.

22 MR. LUSTBERG: No objection.

23 MR. GOLDBERGER: No objection.

24 THE COURT: You are admitted as such. You may
25 inquire.

Graff - direct - Arfa

1615

1 Q Ms. Graff, would you describe for us the basic factors in
2 the use of fingerprints as a means of identification?

3 A Fingerprints can be used for identification because they
4 are both unique and persistent.

5 By unique I mean the patterns that formed are highly
6 discriminating in the relevant population because they are
7 influenced both genetic and environmental factors, genetics
8 being the DNA we get from our parents, and environment being
9 the maternal womb that they developed in.

10 By persistent, I mean that those patterns remain in
11 that formation from creation throughout life until
12 decomposition at death barring significant injury.

13 Q And when do peoples' fingerprints form?

14 A Early in the first trimester, usually between 9 and 16
15 weeks.

16 Q Can identical twins have the same fingerprints?

17 A No. While identical twins have the same DNA and they
18 develop in the same environment, because of all the variables
19 that influence those patterns, they have unique fingerprints,
20 not only between each other but from finger to finger.

21 Q And you referred to persistence a moment ago, but do
22 fingerprints ever change as people age?

23 A As you age, your hand is going to grow and your skin may
24 stretch or grow more wrinkly. If you are working, those
25 ridges can become fine. However, the patterns that form

Graff - direct - Arfa

1616

1 remain in those configurations regardless of changes to the
2 skin.

3 Q Would you please explain to the jury what a latent print
4 is?

5 A So on the palms of our hand and the soles of the feet is
6 where we have that specialized friction-ridged skin.

7 The raised portions of that skin are known as the
8 friction ridges. The spaces in between are known as furrows.

9 As you go throughout your day those patterns get
10 covered in substances such as sweat, oil, dirt, anything that
11 can get on your hands. If you touch an item, an unintentional
12 recording is left behind that is the latent print. Because
13 these are chance recordings, they're often smaller fragmented
14 and invisible to the naked eye requiring forensic processing
15 in order to make them visible.

16 THE COURT: Quick questions. The raised portions
17 are called what?

18 THE WITNESS: Friction ridges.

19 THE COURT: Friction ridges. Just to make sure the
20 record is correct.

21 Go ahead.

22 Q So, just to make sure I understand, if someone touches an
23 object or a surface, can they leave behind a fingerprint?

24 A It is possible, yes.

25 Q When someone touches an object or a surface, do they

Graff - direct - Arfa

1617

1 always leave behind a fingerprint?

2 A Not necessarily. They are multiple factors that
3 influence whether or not a print is left behind. One is the
4 surface that the item has touched. If it's smooth and flat,
5 you're far more likely to leave a print. However, if it's
6 textured or too small, you won't.

7 The condition of the skin, whether or not there is
8 sweat on those ridges. How the item is touched, if they are
9 pressing hard or moving a lot, that will smear it. Then there
10 are also environmental factors.

11 Because prints are mostly made out of sweat, they
12 are very fragile. They can be wiped off. They can evaporate.
13 They're subject to -- if something gets wet, they can be
14 washed away.

15 Q How long do latent prints remain on an object or a
16 surface?

17 A It depends on the surface because they are so fragile.
18 So if it's non-porous, like this desk, they're just resting
19 right on top and they can be easily wiped away. However, if
20 it's Marie porous like paper, the sweat will sometimes soak in
21 and then we will protect it, it can last longer.

22 Q What do you mean by porous?

23 A That the sweat will soak in. So like paper or a napkin
24 or paper towel, the porous items will soak up liquid.

25 Q We have been talking about latent prints. What is a

Graff - direct - Arfa

1618

1 known print?

2 A So a known print is the intentional recording of the
3 patterns in the friction-ridged skin, usually the end joint of
4 the finger.

5 These are usually taken one of two ways: Either
6 with ink or electronically.

7 With ink, the finger is taken and rolled nail to
8 nail in the ink and put on a contrasting background, such as a
9 white fingerprint card --

10 THE COURT: And try to focus on speaking into the
11 microphone.

12 THE WITNESS: My apologies.

13 A (Continuing) on a contrasting background such as a
14 fingerprint card.

15 When the print is taken electronically, the finger
16 is cleaned and then rolled nail to nail across a digital scan.

17 Q Returning now to latent prints, can you please explain to
18 the jury what features of a latent print you look at when you
19 are conducting an analysis of latent prints?

20 A When I am conducting an analysis, I look at three
21 different levels: Level one is the overall pattern and ridge
22 flow. I'm looking for three different patterns: An arch,
23 which is where ridges flow, make an arch and exit out the
24 other side; a loop where ridges come in and form a loop and
25 exit out the same side; and a whirl where the ridges form a

Graff - direct - Arfa

1619

1 circle looking much like a bull's-eye.

2 After level one, I move to Level 2 detail where I
3 look for individual ridge events. I'm looking for ridges that
4 flow and come to a stop known as ending ridge, a ridge that
5 flows and splits into two called a dividing, and dots, which
6 are ridges that are as tall as they are wide, looking much
7 like the period at the end of a sentence. I look for where
8 they are in the print. I look for the direction they're
9 flowing, and the spatial relationship they have with each
10 other. These are the details that I use to make either
11 identifications or exclusions.

12 The third level of detail is the microscopic detail,
13 such as sweat pours and individual ridge edges and shapes.

14 THE COURT: Ms. Arfa, I'm sorry to do this to you, I
15 have a meeting at 1:00 that I have to do a little bit of prep
16 for. So we are going to break a few minutes early.

17 Ladies and gentlemen, you have until two o'clock to
18 enjoy your lunch. Remember do not talk about the case. Don't
19 do any research and keep an open mind. So we will resume at 2
20 o'clock.

21 THE COURTROOM DEPUTY: All rise.

22 (Jury exits the courtroom.)

23 THE COURT: You can step down. We will take up
24 those other issues when we come back. Come back about ten
25 minutes before 2:00 so that we can talk about the --

Graff - direct - Arfa

1620

1 MR. LUSTBERG: The exhibits.

2 THE COURT: The exhibits, correct.

3 Have a good lunch. We will see you at ten of 2:00.

4 MR. HEEREN: Thank you, Judge.

5 (Lunch recess.)

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GRAFF - DIRECT - ARFA

1621

1 (Afternoon session.)

2 THE COURT: My apologies. I didn't mean to have you
3 waiting after lunch.

4 Do we have any issue to address about the exhibits?

5 MR. LUSTBERG: Nothing from defendant McMahon.

6 THE COURT: All the exhibits that the Government
7 sought to admit, and either did so before or just wanted to
8 make sure they did so again, there is no issue from
9 Mr. McMahon.

10 MR. LUSTBERG: That's correct.

11 THE COURT: Same from the other two defendants?

12 MR. GOLDBERGER: Yes, your Honor.

13 THE COURT: Mr. Tung?

14 MR. TUNG: No objection.

15 THE COURT: We'll get the jury and have the witness
16 up on the stand.

17 (Whereupon, the witness resumes the stand.)

18 (Jury enters the courtroom.)

19 THE COURT: Please be seated everyone.

20 Good afternoon ladies and gentlemen of the jury.

21 You certainly sound like you're having a lot of fun back there
22 with Ms. Gonzalez. We're all a little jealous.

23 We're going to resume with the examination of the
24 witness Ms. Arfa.

25 BY MS. ARFA:

GRAFF - DIRECT - ARFA

1622

1 Q Good afternoon.

2 A Good afternoon.

3 Q I'm going to ask you to please move the microphone close
4 to you and make sure you're speaking into it loudly and slowly
5 for everyone's benefit.

6 Can you tell us please what is the methodology that
7 you use to evaluate latent prints?

8 A I use the methodology known as ACEV. It stands for:
9 Analysis Comparison Evaluation and Verification.

10 In the analysis phase, I look at the print and I
11 gather as much information as possible.

12 In the comparison phase, I put the latent and the
13 known side by side and I look for agreement or disagreement.

14 After comparison, I move to evaluation in which I
15 can make one of three decisions. Identification, in which the
16 information in the latent and the known are in agreement,
17 supporting the proposition that they came from the same
18 source. Exclusion, which is where the information in the
19 latent and the known are in disagreement supporting the
20 proposition that they come from a different source. And
21 inconclusive, which means I lack sufficient information to
22 come to one of the other two conclusions.

23 After I finish my exam, we move on to verification,
24 in which my exams are given to another qualified examiner who
25 conducts their own independent case and comes to their own

GRAFF - DIRECT - ARFA

1623

1 conclusion as a quality assurance measure.

2 Q You just mentioned verification, when is that done?

3 A At the FBI verification is conducted on all
4 identifications.

5 Q I'd like to direct your attention now to this case. Did
6 there come a time when you were assigned to analyze physical
7 evidence in this case?

8 A Yes.

9 Q When was that?

10 A In October of 2018.

11 Q From where did you receive the physical evidence?

12 A I was notified that I was assigned the case. I picked up
13 the evidence from the vault in the latent preview unit.

14 MS. ARFA: Your Honor, at this time may I publish
15 GX203, which is a stipulation in evidence?

16 THE COURT: All right, you may.

17 MS. ARFA: Can we go to paragraph seven, please.

18 Government Exhibit 505 are notes fragments of notes,
19 and pieces of tape seized by a law enforcement agent at the
20 property located at -- then an address that's been redacted
21 from the published version of the document -- in New Jersey,
22 on or about September 5, 2018. And then the stipulation also
23 includes the item number and the invoice number.

24 Thank you, Ms. McMahon. You can take that down.

25 Your Honor, may we publish GX505-1 in evidence?

GRAFF - DIRECT - ARFA

1624

1 THE COURT: You may.

2 MS. ARFA: May I approach witness?

3 THE COURT: Yes.

4 BY MS. ARFA:

5 Q Ms. Graff, is that exhibit, which has been marked
6 GX505-1, a piece of the physical evidence you received in this
7 case?

8 A It is. I know because I have my initials on it.

9 Q Did you conduct any analysis on it?

10 A I did.

11 Q Do you know from where that item was recovered?

12 A It was recovered from the address previously stated.

13 Q That I referred to in the stipulation that I read?

14 A Yes.

15 Q Of course I didn't say the address, but that's the same
16 exhibit number, right?

17 A Correct.

18 MS. ARFA: Your Honor, may I approach the witness to
19 publish GX505-2 also in evidence?

20 THE COURT: Yes.

21 BY MS. ARFA:

22 Q Is GX505-2, a piece of the physical evidence that you
23 received in this case?

24 A It is. And it has my initials on it.

25 Q Did you conduct any analysis on GX505-2?

GRAFF - DIRECT - ARFA

1625

1 A I did.

2 Q Could you just describe what GX505-2 is?

3 A Government Exhibit 0505-2 is two notes that have been
4 reconstituted on sticky plastic.

5 Q Going back to GX505-1, would you tell the jury what that
6 is as well?

7 A A paper note.

8 Q Ms. Graff, did any other FBI lab or section handle the
9 physical evidence before you received it?

10 A Yes. When the evidence was received by the FBI, these
11 were pieces of paper; therefore, they were sent to our
12 question documents unit, which put them back together on the
13 sticky plastic.

14 Q What do you mean when you say they put them back
15 together?

16 A They received them as torn pieces of paper, and one of
17 the services that the question document unit provides is
18 reconstituting torn paper.

19 Q What does it mean to reconstitute?

20 A To put them back in their original configuration.

21 Q You testified a moment ago that you conducted analyses on
22 these exhibits. Were you able to recover prints as part of
23 your analysis?

24 A I did.

25 Q Let's go through the items one at a time now. Let's

GRAFF - DIRECT - ARFA

1626

1 begin with GX505-1, please. Did you recover any prints from
2 that item?

3 A I did. I did lift eight latent presents that were
4 suitable for comparison.

5 Q Generally, from where on the item did you recover the
6 prints?

7 A I recovered them from both the side with writing and the
8 back.

9 Q Were any of the prints you recovered located near the
10 writing?

11 A Yes.

12 Q Turning now to GX505-2. Did you recover any prints from
13 those items?

14 A Yes. On the top note I developed 11 latent prints
15 suitable for comparison. And on the note that is behind, I
16 developed eight latent prints suitable for comparison.

17 Q Just to clarify, when you refer to the top note and the
18 bottom, are you referring to the way they are packaged in the
19 plastic?

20 A Yes.

21 Q Generally, from where on those items did you recover
22 those prints?

23 A From both the side with writing as well as the back.

24 Q Were any of the prints on those exhibits located near the
25 writing on the paper?

GRAFF - DIRECT - ARFA

1627

1 A Yes.

2 Q What did you do with the prints that you found?

3 A At that time there was no suspect's name for comparison
4 by the agent. So I encoded them and launched them in our
5 database, which is known as NGI, Next Generation
6 Identification. In order to do this, I go through and encode
7 those second-level details, ending ridges and the defining
8 ridges. And then the computer creates an algorithm, it
9 searches the database for encodings that are close. It brings
10 back the top three candidates, which I then compared.

11 I did that in this case. There were no
12 identifications made. So I added the prints to the Unsolved
13 Latent Filed, ULF. That file is shared with the Department of
14 Homeland Security.

15 Q So let me go back for a moment. You referenced NGI, is
16 that an FBI database?

17 A Yes, that is the FBI's database.

18 Q You referenced ULF, does that belong to a particular law
19 enforcement agency?

20 A That's the FBI's file for unsolved latents, so latents
21 that don't make a hit in the database are placed there; to be
22 run against any future cards that are added to the database,
23 as well as shared with other Government agencies such as the
24 Department of Homeland Security.

25 Q Did there ever come a time that you received any hits?

GRAFF - DIRECT - ARFA

1628

1 A Yes. I received an e-mail from my program manager that
2 the Department of Homeland Security had made a hit and they
3 supplied a fingerprint card bearing the name Congying Zheng.

4 Q I'm sorry, from where were those prints?

5 A From the note print, which was shared with us by the
6 Department of Homeland Security.

7 Q Are the prints that were shared by the Department of
8 Homeland Security for Congying Zheng considered known prints?

9 A Yes.

10 Q What happened at that point?

11 A After I received that, I compared the latents that I
12 developed to that card.

13 Q Did you reach any conclusion?

14 A I did. Would you like me to go through the exhibit?

15 Q Let me ask a follow-up question. So based on your
16 analysis, did you form an opinion as to whether there was a
17 match between the known prints for Congying Zheng that you
18 received from Department of Homeland Security and the latent
19 prints that you found in GX505-1?

20 A Yes. I identified four of the latent prints under
21 Exhibit 505-1 to the prints on the known card bearing the name
22 Congying Zheng.

23 Q Based on your analysis, did you form an opinion whether
24 there was a match between the known prints for Congying Zheng
25 and the latent prints you found on the other Exhibit 505-2?

GRAFF - DIRECT - ARFA

1629

1 A On Government Exhibit 505-2, I identified eight of the
2 prints on the top note to Congying. And three on the notes on
3 the bottom to Congying.

4 Q Just to clarify, when you refer to the top note and the
5 bottom note, is that the reconstituted note?

6 A Yes.

7 Q Could we please show the witness only what has previously
8 been marked as GX443. Ms. McMahon, can I ask you to scroll
9 through all the pages for the witness.

10 Ms. Graff, do you recognize that exhibit?

11 A I do.

12 Q What is it?

13 A It's a demonstrative presentation on how I conduct my
14 examines.

15 Q Is it specific to this case?

16 A It is.

17 Q Is this a fair and accurate demonstrative?

18 A It is.

19 MS. ARFA: The Government offers GX443 in evidence.

20 MR. LUSTBERG: No objection.

21 MR. GOLDBERGER: No objection.

22 MR. TUNG: No objection.

23 THE COURT: Admitted. You may publish.

24 (Government Exhibit 443, was received in evidence.)

25 BY MS. ARFA:

GRAFF - DIRECT - ARFA

1630

1 Q Can you say again generally what we're looking at?

2 A Demonstrative presentation on how I conduct my exams.

3 Q Beginning with the first page, which is on the screen
4 right now, what are we looking at here?

5 A This is an image of prints I developed on Government
6 Exhibit 505-1. These prints were developed with a chemical
7 known as indandione, that reacts with the proteins in sweat.
8 When I develop prints that may be suitable, I send them to the
9 photography unit who captured them in order to preserve them.
10 This is one of the photos captured in order to preserve the
11 print.

12 Q For the benefit of the court reporter, do you know how to
13 spell indandione?

14 A I-N-D-A-N-D-I-O-N-E.

15 Q Can we go to the second page, please. I'm going to ask
16 AUSA Heeren to publish the demonstrative as well.

17 What are we looking at here?

18 A The image on the left, there is a red square which marks
19 the print I'm talking to you about. It is designated as item
20 three, print seven. The image on the right is that print
21 rotated and zoomed.

22 Q What does print seven mean?

23 A On this item I developed eight latent prints that were
24 suitable for comparison. They are numbered one through eight;
25 this is print seven.

GRAFF - DIRECT - ARFA

1631

1 Q Does P7 refer to print seven?

2 A Yes.

3 Q What does designated item number three mean?

4 A Item three was the FBI's inventory item number for
5 Government Exhibit 505-1.

6 Q The words, rotated tip up and enlarged, what does that
7 mean?

8 A If you look at the end of your finger, the tip is the top
9 portion. That means this latent has been rotated as if it was
10 tip up.

11 Q Could we go to page three. I'm going to ask AUSA Heeren
12 to publish that demonstrative.

13 Ms. Graff, what are we looking at here?

14 A This slide demonstrates my analysis. The image on the
15 left is that level one formation that I'm looking for. I'm
16 looking at the overall ridge flow, which in this print is
17 forming a circle, also known as whirl-type pattern.

18 The red triangle is a Delta area. This is where
19 ridges from three different directions come together and form
20 that triangular shape.

21 These are the two focal areas in a latent print.

22 The image on the right, those red points, mark the
23 second-level details. Those ending ridges and those dividing
24 ridges that provide the important data I need for comparison.

25 I'm looking at quantity and clarity. There is

GRAFF - DIRECT - ARFA

1632

1 enough information in this print that it's suitable for
2 comparison. That's why it has been marked with a red
3 horseshoe, that's our documentation indicating the print is of
4 value.

5 Q Ms. McMahon would you cull out the image on the right,
6 please.

7 When you refer to horseshoe, is that the arc on this
8 image?

9 A Yes.

10 Q Now that it's bigger, are those the red dots that you
11 were referring?

12 A Those red dots mark the level-two detail that's used in
13 my comparisons.

14 Q Could we go to page four now, please. What are we
15 looking at here?

16 A This is the known card that I received bearing the name
17 Congying. The red box is marked around the left bump because
18 it has similar level-one pattern to the latent, so it is a
19 whirl-type pattern.

20 Q Could we cull out the name on the top. Could you tell us
21 again where did you receive these prints from?

22 A This is the card that I received from the Department of
23 Homeland Security.

24 Q Let's go to the fifth page, please. What is this?

25 A This is the left bump, only cut out and zoomed in.

GRAFF - DIRECT - ARFA

1633

1 Q When you say cut out, what do you mean?

2 A It's been separated from the rest of the known card.

3 Q Just to clarify, is this a known print or is this a
4 latent print?

5 A This is a known print.

6 Q So is this one of the prints you were given by the
7 Department of Homeland Security?

8 A It is.

9 Q Could we go now to the sixth page, please. What are we
10 looking at here?

11 A This is the beginning of the comparison in which I put a
12 latent and the known side by side.

13 Q Can you tell us what are the two items being compared
14 here?

15 A This is the latent print number seven from item three,
16 and the left thumb print that was recorded on the fingerprint
17 card bearing the name Congying Zheng.

18 Q Which side of the screen is the latent print on?

19 A The left side is the latent; the right side is the known.

20 Q Could we go to the next page, please. What are we
21 looking at here?

22 A When you begin your comparison -- when I begin -- I try
23 to look at the same area in both prints. This is
24 demonstrating that you can see part of the known on the right
25 has been cut because that part was missing in the latent. So

GRAFF - DIRECT - ARFA

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1 then I'm only looking at the same area in both prints.

2 Q On the screen it says these have been cropped and
3 digitally processed. What does that mean?

4 A That means the examiner who made it used digital tools in
5 order to make this demonstrative.

6 Q Let's go to the eighth page, please. I'll ask AUSA
7 Heeren to publish that demonstrative as well. Thank you.

8 What are we looking at here?

9 A This is a slide that shows how I conduct my comparison.
10 I start in a focal point, such as the core.

11 So it we start on the latent on the left. In the
12 very, very center of the core there are ridges there that form
13 almost a C. If you start from that C you move down one, two,
14 three, four, five ridges down, there is an ending ridge
15 pointing to the left marked A.

16 Q Let me suggest that you try with the touch screen to
17 demonstrate.

18 A I don't know how helpful that is.

19 Q Tell us what --

20 A That's towards the center of the core.

21 THE COURT: If you keep your finger on the screen
22 you can draw a circle or make smiley faces.

23 THE WITNESS: This is harder than it looks.

24 THE COURT: It is.

25 A That very center of the core pattern, that's a

GRAFF - DIRECT - ARFA

1635

1 focal point. It's a good place to start. The ridges there
2 almost form that little C. In counting down, one, two -- this
3 is hard -- we'll do our best looking at it.

4 If you can see the point marked A is an ending ridge
5 that points to the left. The ridge right below it, is a
6 dividing ridge, which opens to the left. Moving over one,
7 two, three, there is an ending ridge pointing up.

8 So not only just looking at those ending ridges and
9 dividing ridges, and looking at the direction they point, how
10 they flow, and how many ridges they are from each other.

11 So if we move to the known on the right, you see the
12 C right there in the middle, one, two, three, four, five
13 ridges down from that C there is an ending ridge pointing to
14 the left marked A.

15 THE COURT: Can I ask one question. When you say
16 "C," is that a C that is upright; in other words, not the way
17 you normally see a C on a line?

18 THE WITNESS: Kind of like that.

19 THE COURT: I see, okay.

20 A When you look at ridges enough your brain starts making
21 pictures, sometimes they make smiley faces.

22 It makes kind of like a C. From the point marked A,
23 the ridges below it has dividing ridge to the left. If you
24 move over to the right, one, two, three there is that ending
25 ridge pointing up. I have agreement between latent and known.

GRAFF - DIRECT - ARFA

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1 So starting form the known, at the point marked C,
2 across one ridge. There is another end ridge pointing up
3 marked D. Then if I move over one ridge and come down, there
4 is a dividing ridge opening. This is actually the Delta,
5 another focal point. This is where ridges from you multiple
6 directions come together. You can see the point. The top of
7 the Delta is marked E. The bottom is F, it forms that bell
8 shape that is pretty unusual for a Delta to combine like that.

9 Going back to the latent to make sure that
10 information is in agreement. Starting from C, ending ridge
11 pointing, you move over one ridge to the right, there is an
12 ending ridge. Moving a ridge to the right and come down,
13 there is the Delta. The dividing ridge coming down is joined
14 by the one on the right form to form that bell shape.

15 So using this method, I worked my way through an
16 entire print. I'm making sure all the details are in the
17 right place and facing the right direction, and are in
18 agreement with the known.

19 I have ten-points marked here but there were also
20 more points in the print that I went through. If everything
21 is in agreement, then can I move on to a conclusion.

22 Q You said that there are ten points here, are these ten
23 points just for purposes then of this demonstrative?

24 A That is correct.

25 Q How many points of comparison do you usually look for --

GRAFF - DIRECT - ARFA

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1 I should say, do you usually do?

2 A Research that has been conducted in this area which shows
3 that most examiners start feeling comfortable around seven or
4 eight. That has been backed by statistical studies, that
5 depending on rarity, and various specificity, that seven or
6 eight is enough.

7 Q Ms. McMahon, can we go to page nine. And AUSA Heeren,
8 I'll ask you to publish the last demonstrative. Thank you.

9 Ms. Graff, what are we looking at here?

10 A This is the evaluation stage after. I've gone through
11 and compared the ridges and found them to be in agreement or
12 disagreement, I make my evaluation.

13 So for this print because the information was in
14 agreement, it is an identification which supports the
15 proposition that it came from the same source both the latent
16 and the known. On the image on the left all the details,
17 those second-level details, have been marked with red dots.
18 The image on the right are those same points marked in red in
19 the known.

20 Q What does the red horseshoe on the left signify?

21 A That signifies that this print had enough information to
22 be suitable for comparison.

23 Q Approximately how many red dots, which I think you said
24 are the points of comparison, are reflected in this page?

25 A Over 20.

GRAFF - DIRECT - ARFA

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1 Q Ms. Graff, in your opinion, is the print lifted from the
2 document in GX505-1 that's reflected in this demonstrative, a
3 match to the print card that belongs to Congying Zheng?

4 A Yes. The information in the latent and known support the
5 proposition that they came from the same source.

6 Q Is the method of analysis that you've described with
7 respect to this particular print, the same analysis that you
8 did for all of the identifications?

9 A That is correct.

10 Q Would you remind us how many identifications were there
11 total?

12 A There were 15 across all three notes.

13 Q In your opinion, do all 15 identifications from those
14 notes match to the print card belonging to Congying Zheng?

15 A That's correct.

16 Q Were the 15 identifications verified?

17 A They were.

18 Q By whom?

19 A Erik Carpenter, another examiner at the FBI.

20 Q Was he qualified?

21 A He was.

22 MS. ARFA: Your Honor, may I have a moment?

23 THE COURT: Yes.

24 MS. ARFA: No further questions. Thank you.

25 THE COURT: Thank you. Cross-examination?

GRAFF - CROSS - GOLDBERGER

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1 MR. GOLDBERGER: Just a few.

2 CROSS-EXAMINATION

3 BY MR. GOLDBERGER:

4 Q Were you aware before you were brought into New York to
5 testify that the defendant and his counsel had agreed that it
6 was his fingerprints on the notes?

7 MS. ARFA: Objection.

8 THE COURT: Sustained.

9 Q Were you aware that there had been any contest made as to
10 whether or not these were his fingerprints on the notes?

11 MS. ARFA: Objection.

12 THE COURT: Overruled. Were you aware of any
13 dispute about that?

14 A No.

15 Q The one thing I am interested in is you said that you
16 made a comparison from some information or a document that you
17 got from the Department of Homeland Security, correct?

18 A That's correct.

19 Q That was a -- the Department of Homeland Security deals
20 with immigration documents as well; is that correct?

21 A That is correct.

22 Q So the document that you used from the Department of
23 Homeland Security dealt with Mr. Zheng's immigration
24 documents; is that correct?

25 MS. ARFA: Objection.

GRAFF - CROSS - GOLDBERGER

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1 THE COURT: Sustained.

2 Q Well, it didn't deal with any record of any prior
3 conviction of any kind at any place in America; is that
4 correct?

5 MS. ARFA: Objection.

6 THE COURT: Overruled. To the extent that you're
7 aware, was it connected to any criminal action or arrest?

8 THE WITNESS: I wasn't told where the card came
9 from, just that it had been provided by the Department of
10 Homeland Security.

11 Q Who provided it to you?

12 A It came from my manager, she brought me -- I was
13 forwarded an e-mail and a card, that's all I got, that said
14 they made a hit here is the card.

15 Q Did you get any other documents from any criminal
16 enforcement agency in the United States in regard to
17 Mr. Zheng?

18 A No, I did not.

19 MR. GOLDBERGER: No other questions.

20 THE COURT: Any questions from you, Mr. Lustberg?

21 MR. LUSTBERG: No, your Honor.

22 THE COURT: You, Mr. Tung?

23 MR. TUNG: No, your Honor.

24 THE COURT: Redirect?

25 MS. ARFA: No, your Honor.

Stipulation Read

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1 THE COURT: Thank you. You're free to go.

2 (Whereupon, the witness was excused.)

3 THE COURT: Government's next witness.

4 MS. ARFA: Before we bring in our next witness, may
5 we read a stipulation in.

6 THE COURT: Yes, please.

7 MS. ARFA: And may we publish GX203 on the screen
8 please. It is in evidence.

9 THE COURT: Go ahead.

10 MS. ARFA: I'll ask Ms. McMahon to please cull out
11 paragraph one along with the sub paragraphs.

12 None of the following individuals has ever provided
13 notification to the Attorney General that he or she was
14 acting, would be acting, or had acted as an agent of the
15 People's Republic of China, an official of the People's
16 Republic of China, or any other foreign Government or foreign
17 Government official, pursuant to Title 18 United States Code
18 Section 951 and implementing regulations: Michael McMahon,
19 Zheng Congying, Zhu Yong, Hongru Jin, Hu Ji, Kuang Zebin, Li
20 Feng, Li Minjun, Li Songqing, Lina Xu, Rong Jing, Sun Hui, Tu
21 Lan, Xiao Jun, Zhai Yongqiang, Zhu Feng.

22 Thank you.

23 THE COURT: Thank you. Next witness.

24 MS. CHEN: The Government calls Elizabeth Wheeler.

25 THE COURT: May be mistaken, this may be the

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1 Government's last witness?

2 MS. CHEN: Yes.

3 (Witness takes the witness stand.)

4 **ELIZABETH WHEELER, called as a witness, having been first duly**
5 **sworn/affirmed, was examined and testified as follows:**

6 THE COURTROOM DEPUTY: Have a seat. State and spell
7 your name for the record.

8 THE WITNESS: Elizabeth Wheeler, E-L-I-Z-A-B-E-T-H,
9 W-H-E-E-L-E-R.

10 THE COURT: You may inquire.

11 DIRECT EXAMINATION

12 BY MS. CHEN:

13 Q Good afternoon.

14 A Good afternoon.

15 Q Where do you work?

16 A Federal Bureau of Investigation.

17 Q Do you mind, Agent Wheeler, pulling the microphone
18 closer. What is your title?

19 A Special Agent.

20 Q How long have you been a Special Agent with the FBI?

21 A Approximately 11 years.

22 Q Do you work with any particular team on the FBI?

23 A Yes. I'm assigned to our Violent Crime Task Force with
24 the New York City Police Department, and also the Cellular
25 Analysis Survey Team also known as CAST.

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1 Q As part of CAST, what do you do?

2 A CAST is a program about 80 agents and Task Force officers
3 across the country specifically trained to analyze call detail
4 records, primarily to locate people; whether it's missing
5 persons or fugitives, other subjects of crimes. We're also
6 trained to visually depict where we've located these phones
7 and devices on maps. To provide expert testimony. And to
8 train other law enforcement officers in doing the same tasks.

9 Q Did you receive any specialized training to be a CAST
10 agent?

11 A Yes. The training process itself lasted about 245 hours
12 over the course of a period of time.

13 So I attended the basic class a few years ago. That
14 basic class lasted two and-a-half days. That's an
15 introduction to looking at historical call detail records from
16 the various major cellphone providers: AT&T, T-Mobile,
17 Verizon. And after that initial introduction, I attended the
18 advanced class, which lasted for a week. And was further
19 delving into the historical call details from the various
20 providers, learning the ins and outs of them. We practice
21 displaying those records on maps and presenting them to our
22 classmates as we went about our analysis.

23 After the advanced class, we had what is called a
24 field training exercise. Which is four and-a-half days of
25 receiving a case study at its infancy both in the morning and

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1 afternoon. So both in the morning and afternoon you're
2 solving a case from the beginning to its conclusion. Those
3 are real cases that had been worked by other members of the
4 CAST unit.

5 So we receive basic information that any of
6 investigator would get to start a crime. Such as, 12-year-old
7 girl wasn't in her room this morning when her parents woke up.
8 This is her phone number. This is her Instagram account.
9 Take it from there. And you work that case through its
10 conclusion; ultimately locating that 12-year-old. And you do
11 that every morning and after afternoon. And you culminate it
12 by creating a PowerPoint presentation and presenting it to
13 your peers.

14 (Continued on next page.)
15
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25

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1 EXAMINATION

2 BY MS. CHEN:

3 A After that field training exercise, a portion of us
4 were selected to continue and go to the certification which
5 is a four-week course spread out in two, two-week periods
6 across two months and that's where we receive intensive
7 training from the providers themselves.

8 So AT&T, T-Mobile, Verizon, and another
9 network that doesn't really operate in the Metro New York
10 City region came and spoke to us about how they maintain
11 their records, what they maintain. And they also brought in
12 engineers from those companies to explain a little bit to us
13 about how their networks operate and are set up.

14 We also received during that four-week program
15 a certification program, one week of instruction from
16 professors from the Florida Institute of Technology which is
17 a school down in Florida, obviously. And what those do is
18 they teach college-level courses on radio frequency.

19 So they gave us a one-week course in radio
20 frequency which had a test at the end which we also had to
21 pass in order to move forward to the final culminate project
22 where we again received a case in its infancy.

23 There were various different cases that had
24 been worked previously by members of the CAST Unit. We
25 requested records, obtained the results, and instead of just

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1 finishing at this point after having located the victim, the
2 subject, whatever it was in that particular instance and
3 presenting it, we also did what's called a drive test where
4 we tested and learned how to use other gear and software to
5 further our analysis. And then we had a moot court that
6 lasted several days in which we all had to present our
7 findings as we would into courtroom, as we are today, and
8 then we were subject to cross-examination by lawyers who had
9 been flown in from various jurisdictions across the country
10 to cross-examine us and then after that, we were certified
11 members of the CAST Unit.

12 Q And since your certification, well, when were you
13 certified?

14 A I was certified last September. So September of 2022.

15 Q As a CAST agent, have you worked on criminal
16 investigations handled by the FBI?

17 A Yes, I have.

18 Q Have you reviewed cell phone records and cell site
19 location data?

20 A I have.

21 Q Can you, on a very high level, explain what is a cell
22 site?

23 A So a cell site acts as a gateway between other cell
24 phones instead of operating like walkie-talkies like the
25 ones we had as kids where one walkie-talkie talks to another

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1 walkie-talkie and you have to be generally close to each
2 other to communicate.

3 Cell sites are like gateways in which one cell
4 phone will send a signal to the cell site where they relay
5 signals and transmissions on to the destination phone number
6 or device. These cell sites we all know what they look
7 like. We've seen them on the sides of roads, here in New
8 York City on sides of buildings. There are various
9 different shapes and formats, but they're essentially a
10 location which has antennas which are directed in certain
11 directions to provide coverage to a given area.

12 Q And in your work prior to joining CAST, did you use
13 cell site data in connection with your own investigations?

14 A Yes. I was assigned to the Violent Crime Task Force
15 pretty soon after graduating from the FBI Academy and among
16 the violations we investigate on the squad are fugitives,
17 kidnappings, armed robberies. And so, in almost all those
18 investigations, I've used cell sites both to further the
19 investigation to locate people and devices.

20 Q And, Special Agent Wheeler, have you testified in court
21 before?

22 A I have.

23 Q And when you testified, have you testified as an
24 expert?

25 A I have before, yes.

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1 Q And have you been qualified as an expert in the Eastern
2 District of New York?

3 A Yes, I have.

4 Q And did you testify as an expert in the field of cell
5 site data and geolocation data analysis for cell phones?

6 A Yes, I have.

7 MS. CHEN: Your Honor, at this time, pursuant to
8 Rule 702, the Government proffers Special Agent Wheeler as
9 an expert in the field of cell site data and geolocation
10 data analysis for cell phones.

11 MR. GOLDBERGER: No objection.

12 MR. TUNG: No objection.

13 MR. GOLDBERGER: No objection.

14 THE COURT: You are admitted as an expert in those
15 areas.

16 EXAMINATION BY

17 MS. CHEN: (Continuing.)

18 Q Special Agent Wheeler, in connection with cell sites,
19 do cell phones always connect to the closest cell site to
20 it?

21 A Not necessarily. In an ideal situation, yes. However,
22 the cell site, the way the cellular networks are laid out is
23 they provide areas of overlapping coverage. Almost the way
24 a sprinkler system would to a really big yard giving
25 overlapping coverage. The sprinkler covers all the grass so

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1 it gets watered and different areas don't receive any water,
2 but you don't want them to overlap so much that two
3 sprinklers are just drowning out the grass which would also
4 kill the grass.

5 Another thing that's taken into account by the
6 engineers that lay out the networks is the terrain both
7 natural and man made of a given area. So very tall
8 buildings like we frequently see in Manhattan and the other
9 boroughs those all the affect coverage. The engineers
10 ensure that when they're setting up their networks, they're
11 setting up areas that every area is covered, there's
12 overlapping coverage between the cell site sectors, and
13 ideally, your phone is going to connect to the closest
14 tower. However, if that closest tower is maybe just one
15 block away, but between you and that tower is a very tall
16 building then your cell site -- then your phone is going to
17 detect a stronger, clearer, better signal perhaps from a
18 tower slightly further away.

19 What your cell phone must do, however, is be
20 within the coverage area of a cell site in order to use that
21 cell site. And so, the coverage area does not extend
22 indefinitely. So it has a limit and it has a range, and the
23 engineers set up the networks so that my phone won't
24 connect -- won't jump over three separate cell sites to
25 reach a cell site maybe three or four miles away. That

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1 creates interference and interference in cellular networks
2 is what causes our phone calls to drop and our text messages
3 to not go through. It's a very competitive industry and the
4 providers will do everything they can to avoid that
5 happening so they take great care to ensure that they're
6 minimizing interference and that our phones are operating in
7 the most efficient way possible with the network.

8 Q Can a cell phone connect to a cell site if there's not
9 a call or a text made?

10 A So, our phones, regardless of what we're doing, even if
11 they're just sitting within our pocket, our phones are
12 constantly scanning the network to determine which cell site
13 offers the clearest, strongest, best signal. So that when
14 it comes time to either make a call, receive a call or text,
15 or even use data services, it's just the internet or
16 WhatsApp that our phone is ready and the network is ready to
17 receive them.

18 So there are constant communications between
19 our cell phones and the network. Measurements are
20 constantly being taken so the cell provider, the cell phone
21 provider, knows approximately how many devices are in which
22 area. And that's something that engineers use also when
23 they're assessing their network is to ensure are we seeing a
24 large increase in number of devices in this area; if so, we
25 may want to plan to increase coverage if, let's say, an area

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1 is being developed that had previously been more remote.

2 Q If an individual uses a phone application such as
3 WhatsApp or WeChat, would that communication show what
4 particular cell site is being connected?

5 A No. So the way data sessions work. And by "data
6 session," we're referring to anything using the internet
7 whether it's an application like WeChat or WhatsApp, you're
8 going to see in the records a data session that will cover
9 the time of that session. But the data session is not a
10 single moment in time and the data within. We cannot
11 determine within the duration of that data session exactly
12 where the phone was to match up with an a time of the WeChat
13 message or an even like an I message, for example.

14 Q I think you mentioned before reviewing cell phone
15 records; is that right?

16 A Yes.

17 Q Those cell phone records, how are -- from whom are they
18 obtained?

19 A So the cell phone providers maintain these records.
20 They maintain them in the general course of business for
21 various reasons. One is for billing purposes, right, they
22 want to know, they want to ensure that they can make as much
23 money as they can. That's one reason or keeping them.

24 The other reason is to their network
25 operability. So they have to know which cell sites are

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1 being used, when they're being used, how often so they can
2 ensure there is adequate coverage within their network to
3 provide coverage for the demand for us consumers.

4 When a cell site starts to even reach 50
5 percent capacity, engineers are already planning how to
6 increase the capacity of that cell site or provide
7 additional coverage to that area because if it gets to even
8 80 percent capacity, they start to consider it a failure on
9 their part to not have already planned for increased
10 coverage because, again, going back to us dropping our calls
11 and not being able to communicate for them that's a failure,
12 a massive failure.

13 Q Okay. In connection with your analysis in this case,
14 did you review cell phone records?

15 A I did. So any time we make a call or receive a text, a
16 record is generated and those are the records that cell
17 phone companies provide. And when we as law enforcement
18 serve the phone companies with legal process, they return us
19 certified records that I then analyze to locate devices.

20 Q Okay. And in preparation for your testimony today, and
21 your analysis in this case, did you review what was marked
22 as Government Exhibits 301-A, 302-A, 303-A, 304-B, and
23 305-B?

24 A Yes. I don't know if they're supposed to be on the
25 monitor or not.

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1 Q They're not yet.

2 A Then yes.

3 Q Okay.

4 MS. CHEN: If we could publish what is in evidence
5 as Government Exhibit 201, it's a stipulation.

6 If we could blow up Paragraphs 1, 2, and 3.

7 Just reading from Paragraph 1.

8 Government Exhibit 301 consists of true and
9 accurate copies of records obtained from T-Mobile U.S. Inc.,
10 which records include toll records and cell tower location
11 information relating to a cellular telephone assigned number
12 (626) 492-3980, another telephone assigned number
13 (646) 284-0329, another telephone assigned number
14 (917) 459-9692, another telephone assigned number
15 (917) 528-5073, and another telephone number assigned
16 (929) 253-9778.

17 Paragraph 2 reads:

18 Government Exhibit 302 consists of true and
19 accurate copies of telephone records obtained from T-Mobile
20 which records include toll records and cell tower location
21 information relating to a cellular telephone assigned number
22 (917) 348-5950.

23 Paragraph 3 reads:

24 Government Exhibit 303 consists of true and
25 accurate copies of telephone records obtained from T-Mobile

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1 which records include toll records and cell tower
2 information relating to a cellular telephone assigned number
3 (917) 348-9230.

4 If we can go to Paragraphs 4 and 5.

5 Paragraph 4 reads:

6 Government Exhibit 304 consists of true and
7 accurate copies of telephone records obtained from T-Mobile
8 which records include toll records and cell tower location
9 information relating to a cellular telephone assigned number
10 (929) 360-3467.

11 Paragraph 5 reads:

12 Government Exhibit 305 consists of true and
13 accurate copies of telephone records obtained from Verizon
14 which records include toll records and cell tower
15 information relating to a cellular telephone number
16 (914) 450-9169.

17 Q Special Agent Wheeler, are exhibits 301-A, 302-A,
18 303-A, 304-B, and 305-B subparts of the exhibits I was just
19 discussing?

20 A Yes.

21 MS. CHEN: Your Honor, the Government moves to
22 admit Exhibits 301-A, 302-A, 303-A, 304-B, and 305-B.

23 MS. CONTI: No objection.

24 COURTROOM DEPUTY: Was that 303-A, 304-B and the
25 last one?

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1 MS. CHEN: 305-B.

2 COURTROOM DEPUTY: Thank you so much.

3 MS. CHEN: Of course.

4 (Government's Exhibits 301-A, 302-A, 303-A, 304-B,
5 and 305-B were marked in evidence.)

6 Q Special Agent Wheeler, do the exhibits I just moved
7 into evidence contain the cell site records that you
8 reviewed in this case?

9 A Yes.

10 Q Were you asked by the Government to use those records
11 to determine the approximate location of five phones at
12 certain times between 2017 and 2018?

13 A Yes.

14 Q With respect to this case, did you receive any
15 information other than the cell site records we just
16 discussed?

17 A No.

18 Q Were you provided locations and certain addresses to
19 add to your mapping?

20 A Yes.

21 Q And were you provided just one sentence about the
22 charge of this case to include in your report?

23 A Yes.

24 Q Were you involved in any other casework concerning this
25 investigation or this case?

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1 A No.

2 Q And have you reviewed the indictment in this case?

3 A I have not.

4 Q Okay. Special Agent Wheeler, did you create maps to
5 map out the cell site data you received?

6 A I did.

7 Q Can you explain briefly how you created those maps?

8 A So we take the original certified records from the
9 phone company, we import them into our system which is
10 called ESPA. I then select particular dates and times of
11 interest and I look at the records, what they show. And
12 then I create a visual representation of these phones, these
13 devices, at certain dates and times and I input them into my
14 PowerPoint presentation. And that's pretty much -- so then
15 once I've created the presentation, we also go through the
16 original records for each location and date and time that
17 we've mapped to ensure that they're in the correct location
18 and that everything is as it should be. And from the
19 software we still have the original records.

20 We also ensure that the cell sites listed in
21 the records from the phone company are plotted at the
22 correct locations in our mapping software. We do that by
23 cross referencing the original identifier, the unique
24 identifier for each cell site in the cell site database
25 which is populated by cell tower lists maintained and

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1 provided to us by the cell phone providers themselves to
2 ensure that the location of each cell site depicted on the
3 maps is accurate.

4 Q Okay. And in connection with your analysis, is your
5 report actually peer reviewed?

6 A Yes. So after I complete my report, I send it to
7 another member of the CAST Unit to peer review it, that
8 person conducting the peer review essentially goes through
9 the same process I did. But instead of using our primary
10 system for analysis, ESPA, they use a second program to
11 ensure that a different mapping software is used, a
12 different program is used, and that the results are the
13 same. They also go line by line through the original
14 records and cross reference them with the cell tower records
15 and the presentation I provided to ensure it's accurate.

16 Q Just to be clear, that person who conducts the peer
17 review provided any information about this case?

18 A No.

19 Q Okay.

20 A Other than what's listed in my methodology which you'll
21 see that's all they have.

22 Q Okay.

23 MS. CHEN: Let me publish just for the witness and
24 counsel what's been premarked for identification as
25 Government Exhibit 442.

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1 THE COURT: All right.

2 Q Do you see that, Special Agent Wheeler?

3 A I do.

4 Q Do you recognize this exhibit?

5 A Yes. This is a title page of the presentation I
6 created in conjunction with this case.

7 Q And how do you know that?

8 A I recognize what I created and I put my name on it.

9 Q Okay. And based on your knowledge, training, and
10 experience in the field of cell site data and geolocation
11 data analysis, do you have an opinion as to whether the maps
12 contained in this report fairly and accurately represent the
13 location of the cell sites that interacted with the phones
14 listed in the report?

15 A Yes.

16 Q What is your opinion?

17 A That my slides are accurate.

18 Q Okay.

19 MS. CHEN: Your Honor, at this time, the
20 Government moves to admit Government Exhibit 442.

21 MS. CONTI: No objection.

22 MR. GOLDBERGER: No objection.

23 MR. TUNG: No objection.

24 THE COURT: Okay. Yes, Mr. Tung, okay. Admitted;
25 you may publish.

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1 (Government's Exhibit 442 was marked in evidence.)

2 MS. CHEN: Your Honor, we do have a redacted --
3 we're going to publish a redacted version, if it's okay to
4 hand out an unredacted version for the jurors and counsel.

5 THE COURT: That's fine. Are they individual
6 exhibits or are they in a binder?

7 MS. CHEN: They're individual stapled copies.

8 THE COURT: Go ahead.

9 (A brief pause in the proceedings was held.)

10 MS. CHEN: May I proceed, your Honor.

11 THE COURT: Yes, you may.

12 Q Special Agent Wheeler, just looking at the cover page
13 now.

14 Is this a report that you prepared?

15 A It is.

16 Q And towards the bottom half of the cover page, you see
17 where it says "Accounts Analyzed"?

18 A Yes.

19 Q What's listed below that heading?

20 A Five cellular telephone numbers, four of which are
21 provided for by T-Mobile and a fifth by Verizon.

22 Q Okay. If we could turn to page two.

23 Without reading the entire slide, can you
24 explain briefly what's explained on this page?

25 A Yes. So this is my methodology that outlines what I

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1 did, why I did it, and how I did it.

2 Q And just to be clear, the last sentence of the second
3 paragraph, do you see it says, "All records mapped reflect
4 the local time zone."

5 Can you explain what that means?

6 A Yes. So the providers generally give us the records in
7 UTC time which is Coordinated Universal Time which
8 corresponds to the time in Greenwich, England which,
9 depending on our time zone, whether we're in Daylight
10 Savings Time or Standard Time where either four or five
11 hours apart. So what we do is we translate them into local
12 time so that we are not sitting up here trying to do math
13 all afternoon.

14 Q Okay. Can we go to the next page, please. And do you
15 see three pictures on this page?

16 A I do.

17 Q Can you explain, again, briefly what each picture
18 depicts?

19 A So all three pictures depict various types of cell
20 sites.

21 So the one on the left is the more traditional
22 one that we've been seeing for years now. A tall tower with
23 various antennas angled in different directions. Generally,
24 it seems to be triangular in shape. Sometimes you see them
25 as a squares, but they're generally triangular so they

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1 provide three sectors almost if you think like a circle.
2 Each one would represent 120 degrees. That's the
3 traditional shall cell site.

4 The one in the middle is what we see more
5 often in places like New York City where there's just a
6 density of buildings that you don't really have the space to
7 create a traditional cell tower. It would take up a
8 majority of a city block, super expensive for that type of
9 real estate, so the companies will place the antennas on top
10 of existing structures. And quite often, you'll have a
11 building where you'll is single site cell site with sectors
12 on all corners of the building. That's what we see here in
13 the center. This is actually a cell site that was used in
14 my maps that when we get there I'll draw to your attention
15 and I'll refer to it as the center picture on the cell site
16 slide.

17 On the right side, is what's called a
18 Distributed Antenna System. These are becoming more and
19 more frequent and you'll see them, now that you know what
20 they look like, you'll start to see them everywhere. But
21 it's essentially a single antenna mounted at the top of a
22 telephone poll or traffic light. And what you see here in
23 the red dotted box at the top is that antenna. And then
24 halfway down, right in front of the CVS pharmacy sign, I
25 have another red outlined box which corresponds to the

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1 actual radio. So the radio connected to the antenna, the
2 radio is a little bit further down and the antenna sticks
3 up.

4 These DAS sites tend to provide coverage to a
5 smaller area and they're really meant to boost coverage. So
6 they generally are 360 degrees in coverage. So they don't
7 provide a sector of coverage but they provide coverage in a
8 complete circle generally and to usually a smaller area. So
9 the cell site -- cell phone providers will put them
10 throughout the city in areas that may be there are a lot of
11 tall buildings and they need to boost coverage in the
12 immediate local area. And this is also an example of the
13 cell site used on my slides which I will draw your attention
14 to when we get to it.

15 Q You can turn to the next page, please.

16 If you could again at a high level explain
17 what this slide shows?

18 A Yes, so this is a depiction of how we visually
19 represent a traditional sector for a cell site. You see the
20 two arms pointing at 10:00 o'clock and at 2:00 o'clock.
21 That represents the approximate sector.

22 Now, again, this is radio frequency so the
23 lines aren't spray painted on the ground. This is an
24 approximation. And then you see in the center a shaded
25 area, a wedge. That is simply to show directionality of the

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1 sector in this case. This is to visually represent the cell
2 sector, in this particular case, is facing due north. This
3 is not meant to show you the approximate coverage area of
4 that cell site, it's just to show you the directionality.
5 And in the center facing 12 o'clock or due north is an arrow
6 which represents the center point of that sector. It's
7 called the azimuth and it's represented in the records in
8 degrees.

9 Q Can we actually publish -- it's in evidence now as
10 301-A.

11 This is an Excel spreadsheet. So again --
12 there you go.

13 All right. If we could actually first,
14 Special Agent Wheeler, is this one of the phone records that
15 you reviewed in connection with putting together your
16 report?

17 A Yes.

18 Q Okay. If we can scroll to the right so we can see
19 Columns O through Y. And do you see some of the information
20 you were just describing as to tower and azimuths?

21 A Yes.

22 Q Can you briefly talk about what you're seeing here and
23 how it's reflected in your report?

24 A So if you look at Columns O and P, for lines 13 and 14,
25 you will see the first LTE site I.D., and the first LTE

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1 sector I.D. And so, Column O is telling us which cell site
2 is being used, while Column P tells us which sector of that
3 cell site is being used. And then if you go over to
4 Column S, you'll see "First Tower Azimuth," and that's 20.
5 So, again, that's in degrees. So we'll know that that is
6 pointing north northeast.

7 You'll see on Line 15, instead of using
8 Columns O and P, we're instead of using Columns Q and R to
9 identify which cell site in particular we're using. And
10 when we look that up, it tells us the sector and it also
11 tells us the azimuth which, again, the azimuth is
12 consistently listed here in Column S.

13 Regardless of which Columns O, P, Q, and R
14 we're using, the latitude and longitude of that specific
15 cell site is always represented here in Columns T and U.

16 We have a corresponding address listed in
17 Columns V, W, X, and Y. But that's not necessarily the most
18 accurate indicator of where the cell site is actually
19 located. In New York City, more often than not it is, but
20 in more rural area where there is no cross street, where
21 there is no actual address, they'll put the closest cross
22 street or address. So we always go by the latitude and the
23 longitude which brings us to a specific point on the map.

24 Q Okay. Can we flip back now to Government Exhibit 442
25 which is your report.

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1 And specifically, we can look at both Pages 5
2 and 6.

3 Do you see this on your screen,
4 Special Agent Wheeler?

5 A I do.

6 Q Again, broadly or generally, what do these two slides
7 depict?

8 A These two slides show us Verizon and T-Mobile's
9 networks in the greater New York City area.

10 So, on the left, we have the T-Mobile network
11 represented by green dots that are outlined in black. And
12 on the right, we have the Verizon network which is depicted
13 with red dots circled in black. And this is the location of
14 all of these cell sites for both providers during the time
15 period that I analyzed. And you can see, it's hard to see
16 where Manhattan is, but you can tell there's a greater
17 concentration of dots so much so that it almost becomes
18 black, you can hardly see the actual colors of the cell
19 cites anymore because they're so dense in New York City
20 especially Manhattan and lower Manhattan. Still very dense
21 in Brooklyn and Queens and Harlem. And as you start to move
22 out to the suburbs of Staten Island, of New Jersey, of
23 Westchester, and Long Island you see the towers become
24 further and further apart.

25 Q And just to be clear, throughout this report, did you

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1 always map T-Mobile cell sites in green and Verizon cell
2 sites in red?

3 A I did.

4 Q Okay. Can we now turn to Page 7.

5 Special Agent Wheeler, does this slide show
6 numbers and names associated with those numbers that you
7 were provided?

8 A Yes.

9 Q Okay. And towards the bottom, the most -- the furthest
10 bottom box, do you see where it says, "Locations Mapped in
11 Report"?

12 A Yes.

13 Q Are those locations that you were provided by the
14 Government?

15 A Yes.

16 Q Okay. And for Location 1, does that appear to be an
17 address in Short Hills, New Jersey?

18 A Yes.

19 (Continued on the next page.)
20
21
22
23
24
25

Wheeler - direct - Chen

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1 DIRECT EXAMINATION

2 BY MS. CHEN: (Continuing)

3 Q Location two, does that appear to be an address in
4 Warren, New Jersey?

5 A Yes.

6 Q Skipping down to the pinkish flag with the letter M on
7 it, is that the McMahon residence that appears to be in
8 Mahwah, New Jersey?

9 A Yes.

10 Q And can you walk through briefly the other locations
11 mapped that I did not just talk about?

12 A So there are three green flags. The first says EX in the
13 middle. The second says EM in the middle and the third says
14 HE in the middle. All three of those green flags correspond
15 to various hotels either in New Jersey or New York.

16 EX is the Extended Stay Hotel at 45 International
17 Boulevard in Elizabeth, New Jersey.

18 EM is the Embassy Suites at 95 International
19 Boulevard in Elizabeth, New Jersey.

20 HE is the Hotel Edison at 228 West 47th Street in
21 Manhattan.

22 Q Can you talk about the purple flag with the letter P on
23 it?

24 A That corresponds to the Panera Bread located at 770 route
25 17 in Paramus, New Jersey.

Wheeler - direct - Chen

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1 Q What about all the way at the bottom, the yellow flag?

2 A That corresponds with the T-Mobile located at 196-41
3 Northern Boulevard in Flushing, Queens.

4 Q Okay. If you look at the top box, phones mapped in
5 report, Do you see that box?

6 A I do.

7 Q Are these the specific five phones whose cell site and
8 phone records you reviewed and mapped in this report?

9 A Yes, and they are color-coded for visual aid so that as
10 we move forward through the report any time you see a number
11 that is written in a specific color or a callout box that is a
12 specific color, it will always correspond to the same phone as
13 depicted here in this glossary.

14 MS. CHEN: Okay. We can go to the next page,
15 please.

16 Q Just reading the top heard here, can you explain what
17 this slide shows?

18 A Yes. So here I mapped visually depicted the two most
19 frequent cell sectors used by McMahon's phone ending in 9196
20 between -- in April of 2017, and the dates that this phone
21 used those two sectors was between April 5th and 11th of 2017.

22 Q Sorry. Just to be clear, is that a number ending 9169?

23 A 9169, yes.

24 Q Okay. And what are the two cell sites that were most
25 frequently used between April 5th and 11th of 2017 by this

Wheeler - direct - Chen

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1 phone?

2 A So if you look at the top header, the red box lists the
3 cell ID and azimuth. The cell ID is the identifier for the
4 specific cell sites and the azimuth shows the directionality
5 again of the cell site.

6 Then, the next row I wrote how many calls and the
7 time period. So, for example, the Short Hills, the -- the box
8 on the left here that has a yellow box labeled Short Hills,
9 New Jersey, there are approximately 31 calls between April 5th
10 and 10th of 2017. And this was the most frequent cell sector
11 used by this phone, McMahon's 9169 phone in the entirety of
12 the records.

13 MS. CHEN: Can we go to the next page, please.

14 Q Can you explain what this page tells us about the next
15 slide?

16 A Yes. So normally, often in CAST we will be given cases
17 that involve a specific crime, a specific time, a homicide, a
18 robbery with a specific date and time and we place a device in
19 the vicinity of that crime scene at the specific date and
20 time.

21 In this case I was asked to look quite often for
22 times when these devices were located in the same general
23 vicinity. And, so, what I did here for the ease of
24 understanding the flow of the report as I created these title
25 pages, that at the top will tell us the date. So this is a

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1 time period of April 3rd to the 7th of 2017, and then in the
2 center, I write what we are about to see on the next slide.

3 So in this particular case the next slide will
4 visually depict the cell sites used by F. Zhu ending in 5950,
5 T. Lan's phone ending in 9230 and H. Jin's phone ending in
6 3467 when all of the devices are in the vicinity of the
7 Extended Stay Hotel and Embassy Suites, both of those are
8 located at International Boulevard in Elizabeth, New Jersey
9 between the dates of April 3rd and 7th of 2017.

10 MS. CHEN: Let's go to the next slide.

11 Q Agent Wheeler, I'm going to walk through a couple of
12 things on this slide since it is the first map we are looking
13 at.

14 Do you see these kind of green circles located
15 throughout the map?

16 A Yes, I do.

17 Q What do those circles show us?

18 A As I have also depicted in the legend here in the bottom
19 left corner, those are T-Mobile cell sites.

20 Q To be clear, do you see the two flags that are green with
21 EX and EN written on them?

22 A Yes.

23 Q Again, referring to the legend, what did those show us?

24 A Those corresponds to the Extended Stay Hotel at 45
25 International Boulevard in Elizabeth and the Embassy Suites

Wheeler - direct - Chen

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1 located at 95 International Boulevard in Elizabeth, New
2 Jersey.

3 Q And in this map do you see two circles with A and B on
4 them?

5 A I do, yes.

6 Q What do A and B refer to?

7 A Those are just tower reference markers that I assigned to
8 these two just for ease of understanding, which callout boxes
9 corresponds to which cell sites.

10 Q Okay. Looking now to tower reference B, do you see that
11 box?

12 A I do.

13 Q Do you see three colors in that box?

14 A Yes.

15 Q Does each color denote something different to you?

16 A Yes.

17 Q Go ahead.

18 A Yes. Each color corresponds to a phone. So at the top
19 header, I have the three phones F. Zhu ending in 5950, which
20 is written in blue; T. Lan phone ending in 9230, which is
21 written in orange, and H. Jin's phone ending in 3467, which is
22 written in green. Each callout box corresponds to the
23 corresponding phone with the same color.

24 Q Look at the blue box under tower reference B, do you see
25 where it says 29 calls, 39 calls/texts and 39 calls?

Wheeler - direct - Chen

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1 A I do.

2 Q Can you explain again what those mean?

3 A So, in going through the records, I looked at the number
4 of times not only that the cell phone used this particular
5 cell sites and these sectors, but also the number of times
6 that this phone, the F. Zhu phone ending in 5950 corresponded
7 with other numbers of interest in the investigation.

8 So, for example, 29 calls with H. Jin's number
9 ending in 3467, 39 calls or texts with McMahon's phone ending
10 in 9169 and 39 calls with T. Lan's phone ending in 9230.

11 Q Towards the middle of this page, do you see some of the
12 brackets that we were talking about earlier? Do those denote
13 the sectors that you were explaining to the jury?

14 A Yes, those orange show the sector. Because this is a
15 busy slide in which many cell sites and sectors were used,
16 they overlap, so I have made some of them slightly longer so
17 you can see the colors. For example, under tower reference A,
18 both the green and the blue phone were there. Tower reference
19 B, all three phones were there. So you can better visually
20 understand the records.

21 Q And based on your mapping on this slide, what, if
22 anything, can you tell about the phones' locations for the
23 Zhu, the F. Zhu, T. Lan, and H. Jin phones between April 3rd
24 and 7, 2017?

25 A That between April 3rd and 7th of 2017, all three phones

Wheeler - direct - Chen

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1 were in the vicinity of these two hotels at various times.

2 MS. CHEN: Okay. If we could go to the next slide,
3 please.

4 Q And, again, what does this show or denote to you about
5 what the next slide will be?

6 A This is the title page saying that on the next slide we
7 are going to see the cell sites used by McMahon's phone ending
8 in 9169, F. Zhu's phone ending in 5950, and H. Jin's phone
9 ending in 3467 on April four of 2017 in the vicinity of the
10 Panera Bread located at 770 Route 17 in Paramus, New Jersey.

11 MS. CHEN: Okay. We can go to the next slide.

12 Q So first I want to direct your attention to the top of
13 the slide here. Is there a specific time range that is
14 reflected on this slide?

15 A Yes. So this slide visually depicts records between 1:27
16 and 2:53 in the afternoon of April 4, 2017.

17 Q Okay. Again, are these for three phones: The McMahon,
18 the F. Zhu and the H. Jin phone?

19 A Yes.

20 Q Do you see a flag here with a purple P on it?

21 A I do.

22 Q What again does that show us?

23 A That is the Panera bread, located at 770 Route 17 in
24 Paramus.

25 Q And can you tell us a little bit about the calls or texts

Wheeler - direct - Chen

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1 that the phone in blue, being the F. Zhu phone, made during
2 1:27 and 2:53 p.m. on this slide?

3 A Yes. So between 1:27 and 2:47 p.m., the F. Zhu's phone
4 ending in 5950 --

5 Q Perhaps it's easier to walk through each cell tower. I'm
6 sorry.

7 A Okay. Sure.

8 In summary, almost every single transaction the F.
9 Zhu phone made during this time period was with the McMahon
10 phone ending in 9169. But if you look here where I have the C
11 in the center of the slide, the black dot with the white C in
12 the middle corresponds to the callout box directly above it,
13 tower reference C. And between 1:27 and 1:50, the F. Zhu
14 phone ending in 5950 made or received five text messages, four
15 of which were with McMahon phone ending in 9169.

16 Q Based on your mapping on this slide, is the cell site
17 data consistent with all three phones: McMahon, F. Zhu and H.
18 Jin being in the vicinity of the address marked as Panera
19 Bread during this time period?

20 A Yes.

21 Q In connection with putting together this slide, did you
22 review phone records for where the red phone, the McMahon
23 phone was prior to making this 2:47 p.m. call to E. Gallowitz?

24 A Yes.

25 Q Where was that phone prior to making that call?

Wheeler - direct - Chen

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1 A So, in my methodology that I state that all maps are
2 oriented towards the north, so keeping that in mind, due north
3 on this slide, there's another cell site further north but off
4 of the map and that is where the McMahon phone was prior to
5 this geographic area in particular.

6 Q Okay. And do you know if Mahwah, New Jersey is north of
7 Paramus, New Jersey?

8 A It is.

9 Q Okay. If we could turn to the next slide, please. What
10 does this show about or denote to you about what is coming up
11 on the next slide?

12 A So this is going to be a map showing the vicinity of the
13 Short Hills residence and it will show all of the times that
14 the phones for McMahon ending in 9169, F Zhu's phone ending in
15 5950, and H. Jin's phone ending in 3467, the times that those
16 phones were in the general vicinity of the Short Hills, New
17 Jersey residence for the duration of the records I analyzed.

18 MS. CHEN: Okay. If we could turn to the next
19 slide, please.

20 Q Okay. Did the phones you just described, McMahon, F. Zhu
21 and H. Jin phones, did they connect with what appears to be
22 four cell sites on this map?

23 A So, yes and no. Cell sites -- each singular cell sites
24 can often contain multiple cell sites within it. They are
25 often collocated. It will be maybe because a cell site hits

Wheeler - direct - Chen

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1 the antennae it will have multiple cell sites at different
2 level, different angles. And they are called different cell
3 sites. It's more of a technicality and more for engineering
4 purposes. But they are often collocated. So there were cell
5 sites at four locations that were used by these three phones.

6 Q Can you just remind the jury what is the time period that
7 is mapped on this slide?

8 A This is between April 5th and 10th. And, again, just the
9 times of the cell phones were using cell sites in the vicinity
10 of the Short Hills address.

11 Q Okay. And looking at the box, the most upper right box,
12 do you see the cell site that that box corresponds with?

13 A Yes.

14 Q Is there any closer cell sites than that cell site to the
15 -- or the residence with the number one flag?

16 A No. That is the closest cell sites to the residence.

17 Q Can you just walk through now for the jury some of the
18 calls and/or texts that were called out in the red, blue, and
19 green boxes in the upper right?

20 A Yes. So on April 5th, McMahon's phone ending in 9169 had
21 three calls, one of which was to F Zhu's number and one of
22 which was from E. Gallowitz.

23 On the 6th of April, McMahon's phone ending in 9169
24 had 16 calls, two of which were from F. Zhu and nine of with
25 were with M. Kelly.

Wheeler - direct - Chen

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1 And on April 10th, McMahon's phone ending in 9169
2 had approximately 12 calls, four of which were with F. Zhu and
3 two of which were from Gallowitz.

4 Q Going to the blue box.

5 A The blue box, which represents F Zhu's phone ending in
6 5950, on April 6th had four calls with texts, three of which
7 were with McMahon's phone ending in 9169, and one of which was
8 with T. Lan phone ending in 9230.

9 Q And going to the green.

10 A The green box represents H. Jin's phone ending in 3467,
11 which on April 5th used this location for 18 calls, 13 of
12 which were with F Zhu's phone ending in 5950.

13 Q Okay. And based on your analysis depicted on this slide,
14 is your analysis consistent with these three phones, the
15 McMahon, the F. Zhu and H. Jin phones being in the vicinity of
16 the number one flag together over April 5th through 10th of
17 2017?

18 A Yes. All three phones were in the same vicinity of the
19 Short Hills address, in the same vicinity, yes.

20 MS. CHEN: If we could go to the next slide, please.

21 Q And Special Agent Wheeler, can you explain what time
22 period is reflected on this map?

23 A Yes. So this is the time that McMahon's phone ending in
24 9169 and F. Zhu's phone ending in 5950 were using a collocated
25 tower on April 6th between 1:03 and 3:16 p.m.

Wheeler - direct - Chen

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1 Q And this particular cell site that is called out on this
2 slide, is this the same cell site that we saw earlier that was
3 the most frequent cell site used by the McMahon phone?

4 A Yes.

5 Q And that was on slide eight?

6 A Yes.

7 Q Okay.

8 A The box on the left-hand side.

9 Q Okay. And based on your analysis depicted on this slide,
10 is your analysis consistent with both the McMahon and the F.
11 Zhu phones being in the vicinity of the residence denoted by
12 the number one flag during this time period?

13 A Yes.

14 Q Is there an overlapping presence of those two phones?

15 A Yes. McMahon's phone ending in 9169 uses this cell site
16 and this sector between 1:03 and 2:36 p.m., while F. Zhu's
17 phone ending in 5950 uses the collocated site in a similar
18 sector between 2:06 and 3:16. So between 2:06 and 2:36 there
19 was the overlap, the half-hour overlap.

20 THE COURT: So we are going to take our afternoon
21 break now. We will start again at 4 o'clock. Don't talk
22 about the case. Do don't do any research. Keep an open mind.
23 Enjoy your break.

24 THE COURTROOM DEPUTY: All rise.

25 THE COURT: Can everyone leave their exhibits on the

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1 chair. Sorry about that.

2 You may step down. Okay, everyone, you have until
3 4:00 when we start again.

4 (Recess taken.)

5 THE COURT: Have a seat, everyone.

6 THE COURTROOM DEPUTY: All rise.

7 (The jury enters the courtroom.)

8 THE COURT: Please be seated, everyone. And you may
9 resume your examination, Ms. Chen.

10 BY MS. CHEN:

11 Q Go to page 16, please.

12 Special Agent Wheeler, what does this page signify
13 to you about what the next slide will show?

14 A On the next slide I will visually depict the cell site
15 used by the M. McMahon phone ending in 9169 and Z. Kuang phone
16 ending in 0329 for the duration of the records available in
17 the vicinity the Warren, New Jersey address.

18 MS. CHEN: Okay. If we could go to the next slide,
19 please.

20 Q Again, what are the time periods looking at the header
21 here at the top?

22 A So the available records for the M. McMahon phone that I
23 analyzed ending in 9169 corresponds to April of 2017 and the
24 Z. Kuang phone ending in 3029, which depicted here in gray,
25 those records were from the time period of September of 2018.

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1 Q Okay. And is there a two flag the Warren, New Jersey
2 address or home you were provided?

3 A Yes.

4 Q For the red McMahon phone, can you read the kind of calls
5 denoted here on tower reference A on April 6th, 10th, and
6 11th?

7 A Yes. So the McMahon phone ending in 9169 used this cell
8 sites and a couple of sectors of it on 4/6 for three calls,
9 two of which were with M. Kelly and one of which was to F.
10 Zhu's phone.

11 On April 10th, it used the cell site for 25 calls,
12 11 of which were with E. Gallowitz.

13 And on April 11th of 2017, McMahon's phone used the
14 cell site five times for calls, one of which was from E.
15 Gallowitz.

16 Q And on September 4, 2018, did the Kuang phone ending in
17 0329 use the same site as that by McMahon for the calls you
18 just described?

19 A Yes.

20 Q For the respective time periods, does this analysis show
21 that the phones were in the vicinity of the Warren, New Jersey
22 address?

23 A Yes.

24 MS. CHEN: If we can go to the next page.

25 Q And what time period is reflected on this page?

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1 A So this is a time period of April 6th to the 11th of
2 2017.

3 Q Okay. And looking at tower reference B, do you see the
4 circle with a B on it?

5 A I do.

6 Q Is that the cell sites that you flagged as one of the
7 most frequented cell sites by the McMahon phone during this
8 time period?

9 A No, it's actually tower reference A.

10 Q I see.

11 A The 125-degree sector was the second most common cell
12 site sector used by McMahon ending in 9169 for the entirety of
13 the records.

14 Q And is this analysis consistent with the McMahon phone
15 being in the vicinity of the Warren, New Jersey address for
16 this time period, April 6th through 11th of 2017?

17 A Yes.

18 Q And while in this vicinity, who were the persons, based
19 on what's listed here, that the McMahon phone was in contact
20 with during this time period?

21 A M. Kelly, E. Gallowitz, and F. Zhu.

22 Q If we can go to the next slide and, again, what does this
23 slide depict?

24 A So like the previous slide, this slide is a portion of
25 slide 17 where both the McMahon and the Kuang phones were

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1 shown together. Slide 18 showed simply McMahon's records.

2 And this slide, slide 19 shows simply Z. Kuang's records in
3 the vicinity of the Warren address.

4 Q And does this show a single call made on 1:01 p.m.?

5 A Yes.

6 Q And, again, when that call was made, was the Kuang phone
7 in the vicinity of the Warren, New Jersey address?

8 A Yes.

9 Q If we could go to slide 20. Okay. What does this slide
10 show?

11 A So this next slide is going to show us the entirety of
12 the records of McMahon's phone ending in 9169 on April 6th of
13 2017.

14 MS. CHEN: Okay. And if we could go then to page
15 21.

16 Q So what is the time period captured on this slide?

17 A 8:13 in the morning to 6:26 in the evening.

18 Q And do you see three flags on this particular slide?

19 A Yes.

20 Q Beginning with the one at the top, do you see a purple M
21 flag?

22 A Yes.

23 Q Is that address in Mahwah, New Jersey?

24 A Yes.

25 Q Do you understand that address to be the McMahon

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1 residence?

2 A Yes.

3 Q Going down to one, is that again the Short Hills address
4 we've been seeing on other slides?

5 A Yes.

6 Q And for slide two, is that the Warren address we have
7 been seeing on other slides as well?

8 A Yes.

9 Q Do you see the red dots on this slide that appear to be
10 numbered?

11 A Yes.

12 Q Can you explain to the jury what that means?

13 A So when you are showing a summary like this of an entire
14 day's worth of records, if I were to show the sectors, it
15 wouldn't add much benefit. What it would do is visually
16 confuse the screen and the map.

17 So what I have shown here is the cell sites used,
18 not the sectors. Each cell site is represented by a red dot
19 and in chronological order I numbered the cell sites that were
20 used. So where you see a red dot with a number one, that
21 corresponds to the first cell sites used that day. The second
22 is going to be labeled as two and so on.

23 It goes up to ten. So the tenth cell site was the
24 last one used.

25 Q So using these numbered red cell sites, can you explain

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1 the movement of the McMahon phone on April 26, 2017?

2 A Yes. So I'm going to touch the screen to illustrate the
3 movement because, again, we're looking at a whole day's worth
4 of records.

5 So the first cell sites used is at 8:13 in the
6 morning and that is southwest of the McMahon residence.

7 The second cell site, which is the red dot labeled
8 number two, that was used between 8:20 and 8:25 a.m.

9 The third cell sites labeled as number three, which
10 is further southwest was used at 8:44.

11 And then we come to cell site four, which was seen
12 on previous slides, that is -- first of all, the closest
13 geographically -- the geographically closest cell site to the
14 Short Hills address and is also the most frequent cell site
15 and sector used by McMahon's phone for the duration of the
16 records.

17 On this day, April 6th, McMahon's phone used this
18 cell site between 9:12 in the morning and 2:36 in the
19 afternoon.

20 The next cell site that was used is to the southwest
21 labeled as number five at 3:02 in the afternoon.

22 The next cell site that was used was used between
23 3:05 and 4:18. That's label number six, and that is just west
24 of the Warren address, which also corresponds with the second
25 most frequent cell site and sector used by McMahon's phone for

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1 the entirety of the records, and that was used again between
2 3:05 and 4:18 p.m.

3 And you have another cell site that was used during
4 the same time period labeled number seven, it appears like it
5 is due south of the flag, but that's just because it's very
6 zoomed out. It's actually the cell site we looked at in
7 previous slides just to the northeast of the Warren address,
8 and McMahon's phone used that cell site between 3:25 and 5:11
9 in the afternoon.

10 The next cell site used by McMahon's phone on April
11 6th is labeled as number 8, and that one was used at 5:18 p.m.

12 The next time a cell site is used was at 5:51 and
13 that is labeled No. 9. And this is again to the northeast of
14 the Warren address.

15 And the last time is right here, just south of the
16 magenta flag denoting the McMahon residence. This one I've
17 unfortunately written over, but that's Route 17, the white dot
18 underneath my initials circled there, that cell site is
19 located on Route 17, and it was used by McMahon's phone at
20 6:26 in the afternoon.

21 Q Okay. Are there specific cell sites from your analysis
22 on this map where the McMahon phone spent a longer duration of
23 time during this day on April 6th?

24 A Yes. From the records, the records appear to indicate
25 movement for the majority of the day, except between 9:12 and

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1 2:36, which is also the vicinity of the Short Hills address,
2 and between 3:02 and 5:11 p.m., which is in the vicinity of
3 the Warren address.

4 MS. CHEN: Okay. If we could go to the next slide,
5 please.

6 Q And Agent Wheeler, is this on the same day, April 26,
7 2017?

8 A Yes. And, in fact, it's just a zoomed in version of the
9 previous slides, highlighting these two areas where the phone
10 used cell sites in the same location for an extended period of
11 time.

12 Q Uh-hum.

13 A The cell sites are labeled with the same numbers as the
14 previous slide.

15 So in the top right corner, cell site No. 4 was used
16 between 9:12 and 2:36.

17 This time I have added in the sectors. Cell site 6,
18 7, 5, 6, and 7 were used between 3:02 and 5:11, and that is in
19 the vicinity of the Warren address.

20 And then we have this one No. 8, which was used at
21 5:18. And if you'll recall from the previous slide, this
22 phone begins to move to the northeast, again, towards the
23 vicinity of the residence in Mahwah.

24 Q Again, is this consistent then with the movement of the
25 phone beginning near the flag one, traveling down towards the

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1 flag two and then kind of traveling back due northeast?

2 A Yes.

3 Q Who, if anyone, did the McMahon phone contact using the
4 specific cell sites that are mapped on this particular slide?

5 A Among the people contacted were M. Kelly and F. Zhu.

6 MS. CHEN: Okay, we can go to the next slide,
7 please.

8 Q And what does this tell us about the next slide?

9 A The next slide will show the cell sites used by F. Zhu's
10 phone ending in 5950 and T. Lan's phone ending in 9230 on
11 April 7, 2017 between 7:22 and 11:13 in the morning.

12 MS. CHEN: Okay. If we can go to page 4.

13 Q Looking at the top, what is the specific time period
14 reflected on this map?

15 A Here I've broken down the time period from our title
16 slide. The time period here focuses on 7:22 to 8:55 a.m.

17 Q Okay. And do you see two colors on this particular
18 slide, blue and orange?

19 A Yes.

20 Q And do you see that the blue and orange times for these
21 calls are actually the same exact times?

22 A Yes, which means these two phones were calling each
23 other.

24 Q And is that reflected as well in your notations in the
25 callout boxes?

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1 A Yes.

2 Q So based on your review of these particular three calls,
3 what, if anything, does it tell you about the movement of,
4 let's start with the F. Zhu phone?

5 A So when these calls began between F. Zhu and T. Lan, F.
6 Zhu's phone was in the vicinity of INTERNATIONAL BOULEVARD
7 just out of the Newark Liberty Airport in Newark, New Jersey,
8 which is an area we've previously looked at in terms of this
9 presentation.

10 Q And what happens between the 7:22 call and the 7:45 call?

11 A So the F. Zhu phone by the 7:45 call with T. Lan's is on
12 the approach to the Lincoln Tunnel from the New Jersey
13 Turnpike or I-95.

14 Q And then at the 8:55 call, where is the Zhu phone?

15 A The Zhu phone is then in the vicinity of Hotel Edison in
16 midtown Manhattan.

17 Q Just to be clear, the green EX flag, do you see that at
18 the bottom left?

19 A I do.

20 Q Is that for the Extended Stay Hotel that you spoke about
21 earlier?

22 A Yes. And it's covering up the EM flag for the Embassy
23 Suites since both are located so close to each other. At this
24 level of detail, they're too close to be separated, the flags
25 at this point.

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1 Q Okay. Reviewing the orange phone now, the T. Lan's
2 phone, what, if anything, does the mapping of that phone tell
3 you about its location?

4 A That the T. Lan's phone used cell sites located in the
5 vicinity of Hotel Edison for all three calls.

6 MS. CHEN: Okay. If we can go to page 25 now.

7 Q And now what time period does this map show?

8 A So this shows between 9:01 and 9:21 a.m., and that is
9 callout activity for both F. Zhu's phone ending in 5950 and T.
10 Lan's phone ending in 9230.

11 Q And during this time period, which is about 20 or so
12 minutes, are both of these phones in the same vicinity?

13 A Yes. Both phones are using cell sites within the general
14 vicinity of Hotel Edison.

15 Q And Hotel Edison, is that denoted here with the green
16 flag HE?

17 A It is, yes.

18 Q Okay. And can you just explain a little bit about kind
19 of the density of the green dots we are seeing on this
20 particular map?

21 A So this is midtown Manhattan. And as you would expect,
22 we are due north of Times Square. We are looking at the Port
23 Authority, Bryant Park, Fifth Avenue. There are cell sites on
24 almost every corner as you can see. So they are very, very
25 dense. It's a very densely populated area and this cellular

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1 network reflects that density.

2 Q Okay. And do you see where or close to where I tried to
3 write an arrow, do you see an intersection there of 50th
4 Street?

5 A Yes.

6 Q And Broadway?

7 A Broadway is not listed, but, yes, that's Broadway.

8 Q Okay. Is that intersection a couple blocks away from the
9 flag that you have marked as HE, Hotel Edison?

10 A It's about three -- it's three street blocks and about
11 half an avenue block northeast of Hotel Edison, yes.

12 MS. CHEN: Okay. And if we can go to the next
13 slide.

14 Q Again, what is the time period for this particular map?

15 A So this map shows us activity between 9:52 and 11:13 a.m.
16 This time it's only the F. Zhu phone ending in 5950, as there
17 was no activity to depict on the T. Lan's phone ending in
18 9230.

19 Q Again, can you explain the green dots on this map?

20 A The green dots are the T-Mobile network and the red dots
21 are those cell sites used by F. Zhu's phone during this time
22 period.

23 Q And going to the red dot on the bottom right. Does that
24 appear to be in the vicinity of any particular landmark?

25 A Yes. The cell sites used -- the cell site used by F.

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1 Zhu's phone between 10:28 and 11:13 a.m. is located at JFK
2 Airport. And although this map is very difficult to see and
3 it's very hard to see even the Hotel Edison flag in Midtown
4 Manhattan because it blends in with the dot, I kept the cell
5 site on here to illustrate that the cell site to JFK are
6 intended to serve JFK Airport and not the surrounding
7 neighborhood, but the surrounding neighborhoods have cell
8 sites that cover those areas, and the ones at JFK really are
9 centered to provide coverage.

10 MS. CHEN: Okay. If we could go to the next slide.

11 Q Is this a clean version without the cell sites depicted
12 of what we were just looking at?

13 A Yes, it is.

14 Q And what, if anything, does this slide tell you about the
15 movement of the F. Zhu phone between 9:52 and 11:13 a.m.?

16 A That the phone moved from the cell site used at 9:52 in
17 the vicinity of Midtown Tunnel and the next cell site used by
18 F. Zhu's phone at 10:28 and for the duration until 11:13 a.m.
19 was at JFK Airport.

20 Q And Special Agent Wheeler, I believe the last couple
21 slides we were just looking at were all for April 7, 2017; is
22 that right?

23 A That is true, yes.

24 Q Having reviewed these slides now, what, if anything, does
25 this data show us about the movement of the F. Zhu phone?

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1692

1 A That the F. Zhu phone moved from the vicinity of the
2 Newark Liberty International Airport through Midtown Manhattan
3 and down to the JFK International Airport within approximately
4 three-and-a-half hours.

5 MS. CHEN: Okay. If we could go to the next page.

6 Q And what does this show us?

7 A So this slide is going to show us another summary of when
8 the phones corresponding with F. Zhu, T. Lan and H. Jin were
9 in about a third of a mile of Hotel Edison in Midtown
10 Manhattan between April 7th and 9th of 2017.

11 MS. CHEN: Okay. If we could turn to the next page,
12 please.

13 A So as I'm sure you can imagine, there was an extensive
14 amount of data of the number of times that I had to visually
15 depict these three phones within a third of a mile of Hotel
16 Edison. So what I chose to do here is instead of calling out
17 each individual cell site and the times that each phone used
18 that cell, I broke it down by phone number.

19 So on the left side, we have a column, a couple of
20 columns, and you see the blue is all grouped together. So you
21 can see the cell towers, the cell sites that the Zhu phone
22 ending in 5950 used.

23 And where it says tower, I have various towers in
24 the various colors on the map. So if a cell site was used
25 only by the Zhu phone like, for example, cell site 8, which is

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1 in the top right corner of the slide, the dot is only blue.
2 However, if you move a little bit to the south, you'll see
3 cell site B has a blue dot and is surrounded by an orange dot,
4 which means it was used both by the Zhu phone and by the Lan
5 phone.

6 And then moving a little bit further to the
7 southwest, you see cell site tower reference E, which has a
8 blue dot, an orange dot, and a green dot. And that shows that
9 that cell site was used by all three phones during this time
10 period.

11 Q Okay. And, again, looking at the box now on the left,
12 what are the phones that the blue, orange, and green phones
13 are in contact with between April 7th and 9th as depicted on
14 this slide?

15 A So the contacts that these phones were in contact with,
16 the F. Zhu phone was in contact with McMahon, with T. Lan and
17 with H. Jin. The T. Lan phone was in contacted with F. Zhu.
18 And the H. Jin phone was in contact with F. Zhu.

19 Q And do you see a cell tower E depicted here?

20 A Yes.

21 Q Is that actually at 50th or very close to 50th Street and
22 Broadway?

23 A Yes. That is the one you made the yellow arrow at on the
24 previous slide.

25 Q Okay. If you go to tower E in the callout box, do you

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1 see where it states 16 calls/texts?

2 A I do.

3 Q Can you just read below that who those calls or who some
4 of those calls and texts were made to or from?

5 A So for the F. Zhu phone, between April 8th and 9th, of
6 the 16 calls and texts, 12 were with McMahon, one was from T.
7 Lan, and one was to H. Jin.

8 (Continued on next page.)

9

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WHEELER - DIRECT - CHEN

1695

1 BY MS. CHEN:

2 Q We can go to the next slide. What does this tell us
3 about the upcoming slide?

4 A So this is going to show us the cell-sites used by F.
5 Zhu's phone ending in 5950 between April 10 and 11 in the
6 vicinity of the TD Bank at 196-41 Northern Boulevard in
7 Flushing.

8 Q Let's go to page 31. Again what is this date range here
9 reflected on this map?

10 A April 10 to the 11. You can see two cell-sites were used
11 by F. Zhu's phone. Two sectors off of one cell-site, then the
12 cell-site in the center-left area depicted by the circle is
13 that DOS site that I talked about on my cell-site example
14 slide that provides 360-degree coverage.

15 The blue circle around the cell-site here, does not
16 depict the coverage area of that DOS site. It's just meant to
17 show the directionality and it provides 360-degree coverage;
18 as opposed, to sectorized coverage.

19 Q Do you see the yellow flag in the middle of the page?

20 A Yes.

21 Q What does that denote?

22 A A location of the TD Bank at 196-41 Northern Boulevard in
23 Flushing, Queens.

24 Q What is the neighborhood under the yellow flag there?

25 A Auburndale.

WHEELER - DIRECT - CHEN

1696

1 Q Is that a neighborhood in Queens?

2 A Yes.

3 Q Looking to the call-out box out here on the upper right,
4 do you see that?

5 A I do.

6 Q Can you walk through the texts that are reflected in the
7 bottom portion of this call-out box?

8 A The bottom portion or the both portions?

9 Q Both portions.

10 A The top portion depicts an azimuth of 140 degrees. So
11 that is going to be the sector facing the southeast. And on
12 April 10, between 11 and 11:28 a.m., F. Zhu's phone had ten
13 text messages or used the cell-site for ten text messages all
14 of which were with McMahon.

15 And the other sector, the next box, with an azimuth
16 230 degrees, which points to the southwest, F. Zhu's phone
17 used that sector on April 10 at 10:59 in the morning and 5:46
18 in the evening for two texts, both of which were with McMahon.
19 Again on April 11 between 8:26 and 8:31 in the morning for
20 five texts, all of which were with McMahon.

21 Q Is the Zhu phone using this particular cell-site, the one
22 that is a little bit upper right, is it consistent that a
23 phone using that cell-site would be in the vicinity of the TD
24 Bank that is flagged in yellow?

25 A Yes.

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1 MS. CHEN: One moment, your Honor.

2 THE COURT: All right.

3 MS. CHEN: No further questions.

4 THE COURT: Thank you, Ms. Chen.

5 CROSS-EXAMINATION

6 BY MS. CONTI:

7 Q Good afternoon, Ms. Wheeler.

8 A Good afternoon.

9 Q I want to make sure I understand your testimony. Can we
10 publish what is previously admitted as Government Exhibit 442,
11 and the Government has graciously offered to help me with the
12 exhibit. Can we go to page 14?

13 Ms. Wheeler you're saying that the cell tower
14 records, the phone records and the maps that you've been
15 discussing, show that Mr. McMahon was in the vicinity of the
16 address in Short Hills, New Jersey on April 5, April 6, and
17 April 10, 2017. Correct?

18 A That's what this slide depicts, yes.

19 Q But the map does not show that Mr. McMahon was in the
20 vicinity of the Short Hills, New Jersey address on April 7 or
21 8, 2017. Correct?

22 A That's correct.

23 Q This map shows the number of calls that Mr. McMahon made
24 or received while in the vicinity of the address in Short
25 Hills New Jersey on April 5, April 6, April 10, 2017.

WHEELER - DIRECT - CHEN

1698

1 Correct?

2 A Yes.

3 Q But neither of these cell tower data, the cellphone
4 records, or your maps show us anything about the contents of
5 the calls. Correct?

6 A That is true.

7 Q Of course, the map shows what it does because Mr. McMahon
8 used his own cellphone, correct?

9 A I don't know. That was the number and the name provided
10 to me.

11 Q That's the number (914)450-9169, correct?

12 A Yes.

13 Q The records do not show that Mr. McMahon used WhatsApp or
14 WeChat, correct?

15 A Those would not be reflected on the records I have access
16 to. Those records would be used to make a record with any of
17 those providers, applications, you would use a data session
18 and the data session does not parse out individual locations
19 and times that would correspond to messages.

20 Q Going back to page ten of Exhibit 442. The cellphone
21 records, the cell tower records, and your maps do not indicate
22 that Mr. McMahon was in the vicinity of the Extended Stay
23 Hotel and the Embassy Suites in Elizabeth, New Jersey between
24 April 3rd, April 7, 2017. Correct?

25 A Correct.

WHEELER - DIRECT - CHEN

1699

1 Q Going to page 12. The cellphone records, the cell tower
2 records, and your maps, do confirm that Mr. McMahon, Johnny
3 Zhu, and Hongru Jin was at Panera Bread in Paramus on
4 April 24, 2017. Correct?

5 A What the records show is that all three phones were in
6 the vicinity of the Panera Bread, yes.

7 Q I'm going to page 17 of Exhibit 442. The cellphone
8 records, the cell tower records, and your maps confirm that
9 Mr. McMahon was in the vicinity of the address in Warren, New
10 Jersey on April 6, April 10, April 11, 2017. Correct?

11 A That's what this map shows, yes.

12 Q But not on April 7 or April 8, 2017. Correct?

13 A No.

14 Q This map also shows that Mr. McMahon either made or
15 received calls on April 6, April 10, April 11, 2017 while in
16 the vicinity of the Warren, New Jersey, address. Correct?

17 A Yes.

18 Q Again, the cellphone provider records, the cell tower
19 records, and your map, do not show the subject of these calls,
20 correct?

21 A No, those are never reflected, content is never reflected
22 in the call detail records.

23 Q Once again, this shows that Mr. McMahon used the phone
24 number (914)450-9169. Correct?

25 A Yes.

WHEELER - DIRECT - CHEN

1700

1 Q You did not create a map detailing Mr. McMahon's location
2 activities after April 11, 2017, correct?

3 A I looked at the entirety of the records. I think the
4 last day I was asked to map was April 11.

5 Q Okay. Going back to page 17 of Exhibit 442. Points A,
6 B, C show Mike in the vicinity of the address in Warren on
7 April 6, April 10, April 11. Correct?

8 A By Mike you mean McMahon's phone?

9 Q Sorry about that. Yes.

10 A Could you repeat the question?

11 Q Yes, sorry about that.

12 Points A, B, C on page 17 show that Mr. McMahon was
13 in the vicinity of the address in Warren on April 6, April 10,
14 April 11. Correct?

15 A Yes. In this particular case I think tower reference C
16 may correspond more to movement towards or away from the
17 address than presence at the actual address. I think the
18 presence in the vicinity of the address is reflected more by
19 tower references A and B.

20 Q And tower reference to you shows Mr. McMahon at a
21 different location in Warren, New Jersey, correct?

22 A Not a different location, different coverage area. A
23 different cell-site was used, yes.

24 Q Do you know whether point D was in the vicinity of the
25 Warren police department?

WHEELER - DIRECT - CHEN

1701

1 A I don't know.

2 Q You didn't look into any locations within the vicinity of
3 point D other than the address in Warren, correct?

4 A I drove by the general location; but not every street,
5 no.

6 Q You weren't asked to look into any locations other than
7 the address in Warren, correct?

8 A Not in Warren, no.

9 Q Mr. McMahon either made or received one call while in the
10 vicinity of tower D on April 11, 2017, correct?

11 A Yes.

12 Q Were you asked to look at Mr. McMahon's calls with the
13 phone number (973)564-7011?

14 A May I refer to the glossary page?

15 Q Yes, of course.

16 (Witness reviewing document.)

17 A Can you repeat the phone number?

18 Q (973)564-7001.

19 A That was not one of the numbers that was culled out to me
20 as one to be coordinated.

21 Q What about (908)753-1146?

22 A No.

23 Q Just one more set of questions.

24 Did you observe any calls between Mr. McMahon and
25 the Tu Lan phone number?

WHEELER - DIRECT - CHEN

1702

1 A I would have to go back and look at the original records.

2 Q Do you recall observing any calls between Mr. McMahon and
3 Tu Lan?

4 A I can't say. I looked at thousands of lines of data.

5 Q Do you recall whether you observed any calls between
6 Mr. McMahon and the Hongru Jin phone number?

7 A I can't say without looking at the records.

8 Q Do you recall observing any calls between Mr. McMahon and
9 the Z. Kuang phone number?

10 A Without looking at the record, I can't say. But I'll be
11 happy to pull them up.

12 Q One last question. I'm going to page 17 of the record,
13 442.

14 This map depicts calls from the McMahon phone number
15 and the Z. Kuang phone number in the vicinity of the Warren
16 address, correct?

17 A Yes.

18 Q But the cell-site data calls for Mr. McMahon and Z. Kuang
19 were one year apart, approximately, correct?

20 A Almost a year and-a-half, yes.

21 MS. CONTI: Thank you. No further questions.

22 THE COURT: Thank you.

23 MR. GOLDBERGER: A few, your Honor.

24 THE COURT: Go ahead.

25 CROSS-EXAMINATION

WHEELER - CROSS - GOLDBERGER

1703

1 BY MR. GOLDBERGER:

2 Q Good afternoon, Agent Wheeler.

3 A Good afternoon.

4 Q Would you look at the first page at Exhibit 0442, which
5 you've been referring to. And do you see on the top of the
6 page where it says: One background?

7 A No.

8 Q Let me start over again.

9 There came a time when you were assigned the task
10 that you did and that you've testified about; is that correct?

11 A Yes.

12 Q When was that?

13 A I believe it was in April of this year.

14 Q So certainly within the last three months?

15 A Yes.

16 Q Who assigned that you task?

17 A I received a request from the United States Attorney's
18 Office for the Eastern District of New York.

19 Q Did you have discussions with various members of the
20 United States Attorney's Office about the job that you were
21 assigned?

22 A Primarily one AUSA.

23 Q Which one?

24 A Irisa Chen.

25 Q Did you meet Ms. Chen at the United States Attorney's

WHEELER - CROSS - GOLDBERGER

1704

1 Office here in the Eastern District of New York?

2 A I did not.

3 Q How did you have contact with her?

4 A It was either by phone or over WebEx.

5 Q You had a -- did you have a discussion about the case
6 itself, forgetting about what your particular assignment is?

7 A Not really. Very minimal details were provided. I was
8 just asked to look at the records that they were going to send
9 me, certain dates and times, and contact between the phones in
10 question.

11 Q Okay. There was clearly in your mind certain phones that
12 you were instructed or told to take a look at carefully in
13 terms of making this report?

14 A Yes. I was provided with actual records for certain
15 phones.

16 Q Would you -- I'm going to read you something.

17 By the way, you made this report and the report was
18 dated May 25, 2023; is that correct?

19 A That's correct.

20 Q Is that correct?

21 A Yes, that's correct.

22 Q You submitted that to the United States Attorney's Office
23 on that date?

24 A Yes.

25 Q Then did you have meetings with the various assistants,

WHEELER - CROSS - GOLDBERGER

1705

1 including Ms. Chen, after that date?

2 A Yes, I think we had a maybe two or three.

3 Q Were there any changes that were suggested to you that
4 should be made in the report?

5 A There were certain pages that we, they said I could take
6 out. I took those pages out. And they did ask on the
7 particular slide that was really busy where I had all the
8 cell-sites, they did say it might be helpful to have one
9 without the cell-sites.

10 Q What pages were asked -- withdrawn.

11 Who asked you to take out pages?

12 A It was the case team on the call.

13 Q How many pages were taken out of the report?

14 A One or two.

15 Q Referring to first page of the report. I'm going to read
16 you something, you tell me if this is a correct reading and
17 understanding of the report.

18 It says as follows: One background the Federal
19 Bureau of Investigation, FBI, Cellular Analyst Survey Team,
20 the Cast.

21 You're a member of CAST?

22 A I am.

23 Q It was requested by the United States Attorney's Office
24 for the Eastern District of New York to analyze cellphone
25 records for -- then it lists five numbers -- (646)284-0329,

WHEELER - CROSS - GOLDBERGER

1706

1 (914)450-9169, (917)348-5950, (917)348-29230 (sic), and
2 (929)360-3467, the target cellphones. And then, by the way,
3 in parentheses it says before the next sentence, it says in
4 parentheses, quote, target cellphones; is that correct?

5 A Yes.

6 Q The next line is: Target cellphones are to believed to
7 be associated with the conspiracy to act as agents of a
8 foreign Government and interstate stalking in 2017 and 2018.
9 Correct?

10 A Yes.

11 Q You wrote that?

12 A Yes.

13 Q So is it correct that the five numbers that you were
14 given as the target cellphones were these five numbers?

15 A So target cellphones is consistent through all of my
16 reports in CAST.

17 Q Just answer my question. Were these the five numbers
18 that you were given as target cellphones in this case?

19 A I was given additional records as well.

20 Q When you say you were given additional records, does that
21 mean that they were not target cellphones, the other records
22 that you were given?

23 A So the target cellphones refer to the phones that were
24 actually mapped in my report, as opposed to the ones the
25 United States Attorney's Office told me were target

WHEELER - CROSS - GOLDBERGER

1707

1 cellphones. The United States Attorney's Office didn't
2 provide me with information about which was a target
3 cellphone, which may have been a victim cellphone.

4 For the purposes of CAST, we refer to them as target
5 cellphones; they are the targets of our product, our analysis.

6 Q On page seven of this exhibit it says at the top of the
7 page: Map, location and phone lists.

8 Then it says in the first box: Phones mapped in
9 report. It gives the numbers. It gives the provider. It
10 also gives the associated name. Correct?

11 A Yes.

12 Q The name that it gives, which as I understand it, correct
13 me if I'm wrong, is the phone number associated with that
14 particular name; is that correct?

15 A The name written in associated name column?

16 Q Yes.

17 A That is the name provided to me by the United States
18 Attorney's Office.

19 Q How does that relate to the number on the left side -- is
20 that the number for that individual?

21 A Yes.

22 Q For whatever reasons, these are the five individual
23 people that you were basically told to investigate in terms of
24 their phone calls in the time period that you were involved.
25 Correct?

WHEELER - CROSS - GOLDBERGER

1708

1 A No.

2 Q Okay. There were other people as well?

3 A I was provided more records than just these five. In
4 looking at specific dates that the United States Attorney's
5 Office asked me to look at, the maps I created only had
6 records mapped for these five phones. Which is why I have a
7 separate box in the center of phones that were not mapped but
8 were referenced in the report.

9 Q Right. So let's take a look at that second box.

10 It says: Phones not mapped but referenced in the
11 report. This there is a number on the second line
12 (626)492-9380. It says: C. Chaohong. Is that correct?

13 A Yes.

14 Q Where does that come from?

15 A I actually have records for that phone number. And that
16 name was provided to me by the United States Attorney's
17 Office.

18 Q Where is that -- do you know where the person who has
19 that phone number, where that person was living at the time?

20 MS. CHEN: Objection.

21 THE COURT: Overruled. If you know.

22 A I don't know.

23 Q What was done to check out that phone number beyond what
24 is in this box?

25 MS. CHEN: Objection.

WHEELER - CROSS - GOLDBERGER

1709

1 THE COURT: Sustained as to form. I'm not sure what
2 that means.

3 By her?

4 MR. GOLDBERGER: Yes. In the sense, did you
5 follow-up with any other information or try to gain any other
6 information about that phone number?

7 THE WITNESS: No, that is not my role.

8 Q I'm not asking you what your role was. I'm asking what
9 you did?

10 THE COURT: Sustained. You asked her the question.
11 She said it wasn't her role.

12 Q It appears from what you testified that there was a phone
13 call that was made by a Vincent Kuang on September 4 or 5; is
14 that correct?

15 MS. CHEN: Objection. If we could clarify what
16 year.

17 THE COURT: That's fair. What year are we talking
18 about?

19 MR. GOLDBERGER: 2018.

20 A I don't know which direction the call was, but there was
21 a call on September 4, 2018 by that phone, yes.

22 Q It appears that Vincent Kuang's phone number and Chen
23 Chaohong's phone number communicated, the phones communicated,
24 with each other. You don't know who made the call, but they
25 communicated with each other on September 4 of 2018. Correct?

WHEELER - CROSS - GOLDBERGER

1710

1 A I can answer that question if we can look at that slide.

2 Q Take a look. You have the exhibit in front of you. Take
3 a look at whatever you need to look at.

4 MS. CHEN: For the record, I think it's page 19 that
5 Mr. Goldberger is referring to.

6 THE COURT: Thank you for expediting that. Page 19.

7 A On September 4, 2018, Z. Kuang phone ending in 0329
8 called C. Chaohong's phone at 1:01 p.m.

9 Q So you know that it was Kuang's phone that called Chen's
10 phone, not the other way around?

11 A Yes.

12 Q How do you know that?

13 A I looked at the records.

14 Q Okay. So do you have any phone calls or records that
15 show a Congying Zheng making phone calls on that date?

16 A The reason I looked at this particular phone call and
17 highlighted this phone call, was it was made in the vicinity
18 of the Warren address. I'm happy to pull up the original
19 records and answer that question, but I would need to look at
20 the original records.

21 Q Did you go over your testimony with Ms. Chen before you
22 testified?

23 A Yes.

24 Q For how long?

25 A The less than two hours.

WHEELER - CROSS - GOLDBERGER

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1 Q On only one occasion?

2 A No, combined on a couple of occasions.

3 Q When was it that you were first assigned the task of
4 doing this work?

5 A I believe it was April 2023.

6 Q The report was submitted on May 25?

7 A Yes.

8 Q Did you have discussions with Ms. Chen or any other
9 assistants prior to the time that you filed your report?

10 MS. CHEN: Objection. Asked and answered.

11 MR. GOLDBERGER: I haven't asked that question,
12 Judge. That's an important question.

13 THE COURT: Overruled. Go ahead and answer.

14 A Yes. Since the time that we first discussed the case up
15 until the time that I'm sitting here today, I've been in
16 contact with the United States Attorney's Office.

17 Q Were you asked at any time to or given a phone number of
18 Mr. Zheng, Congying Zheng, to check out whether or not he made
19 any phone calls during the period of time that you were doing
20 this report?

21 A I don't remember if I was provided records for that phone
22 number. I would be happy to go back and look at what was
23 produced, but other than that I can't remember. There were a
24 lot of phones in this case.

25 Q There were only five that were that you designated as

WHEELER - CROSS - GOLDBERGER

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1 sort of target phones; is that correct?

2 A There were five that I ended up mapping. I was provided
3 with more records that didn't appear in the maps.

4 Q Who decided what would be target phones, you or the
5 prosecutors office?

6 A So I think you're confusing target phones with a law
7 enforcement term of, a target of my investigation, which would
8 be the subject of my investigation.

9 In this context I was provided with various records
10 for various numbers. I was given dates of interest and
11 locations of interest. In my mapping software I input all of
12 the records that I have. I look to see which phones were in
13 the vicinity of those locations on those dates and times, and
14 those are what ended up in my maps.

15 Those what I call the target phones, because they
16 were the target -- not of the investigation, because I don't
17 have any knowledge of that -- but the targets of my analysis
18 and my maps.

19 Q Were you asked at any time, Agent Wheeler, to investigate
20 further the phone number of Chen Chaohong?

21 A No, because I'm not an investigator in this case.

22 Q Do you know whether or not any other agent in California
23 or anywhere else was asked to investigate Chen Chaohong's
24 phone?

25 MS. CHEN: Objection.

WHEELER - CROSS - GOLDBERGER

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1 THE COURT: Sustained. Beyond the scope.

2 MR. GOLDBERGER: No other questions, your Honor.

3 THE COURT: Thank you. Redirect?

4 MS. CHEN: I think Mr. Tung --

5 THE COURT: Mr. Tung, do you have any questions?

6 MR. TUNG: I don't have any questions.

7 THE COURT: Any redirect?

8 MS. CHEN: No, your Honor.

9 THE COURT: Thank you. You're free to go.

10 (Whereupon, the witness was excused.)

11 MR. HEEREN: Brief sidebar?

12 THE COURT: Sure.

13 (Continued on the next page.)

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Sidebar

1714

1 (Sidebar conference.)

2 MR. HEEREN: If it's okay with the Court, we'd like
3 to request permission to formally rest tomorrow morning so we
4 have an opportunity to check the exhibits. I've spoken to
5 Mr. Goldberger and Mr. Lustberg, and they have no objection to
6 that. I have not had an opportunity to ask Mr. Tung. But if
7 Mr. Tung has no objection, and the Court has no objection,
8 we'd like the opportunity. We anticipate resting first thing
9 in the morning; and counsel can begin right away.

10 THE COURT: I'm assuming you're not contemplating
11 another witness.

12 MR. HEEREN: No. Purely to check the exhibits. And
13 if there is a minor issue, to correct it by talking to counsel
14 and making the record clear. But not to call any witnesses.

15 THE COURT: That's fine. But for the jury's sake, I
16 want to tell them that it's anticipated the Government will
17 rest in the morning. And the defense, if they decide to, will
18 provide their evidence, which should not consume the whole
19 day.

20 Just to give them some idea, because they've been
21 asking whether they need to be make arrangements next week,
22 that would be after Monday which is a holiday. Through
23 Ms. Gonzalez I've reassured them that we think they should get
24 the case no later than Thursday morning, assuming summations
25 are all of Wednesday, and advising them about the law. I'm

Sidebar

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1 hoping that is a pretty safe estimate. I want to at least
2 give them some guide posts. But I'm going to tell them that
3 we anticipate you'll rest in the morning.

4 MR. GOLDBERGER: Could we get a handle on your
5 Honor's plans? We were thinking that we would close after a
6 conference on the requested charge.

7 THE COURT: That would be tomorrow afternoon.

8 MR. GOLDBERGER: And we close on Wednesday morning?

9 THE COURT: Correct.

10 MR. GOLDBERGER: Both sides?

11 THE COURT: Yes. I assume they won't take more than
12 a day; everyone should get their summations in.

13 MR. LUSTBERG: We can talk about this after they are
14 gone, I want to know how you want to handle some of the charge
15 conference.

16 (End of sidebar conference.)

17 (Continued on the next page.)

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Proceedings

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1 (In open court.)

2 THE COURT: Good news, ladies and gentlemen. We
3 are done for today in terms of presentation of any evidence.
4 And it is expected that the first thing tomorrow morning the
5 Government will rest, basically formally close their case.
6 They want to make sure they didn't miss any piece of paper or
7 get in something that should have formally. Because once
8 they close, they can't reopen.

9 Then the defense may, but is not required to, put on
10 evidence. It is anticipated that some part of the day,
11 however, will be used by one or more defendants to put on some
12 evidence. But no one expects it to go all day tomorrow.

13 And then if we end early, I will then take up some
14 matters outside your presence, you'll be free to go home,
15 before we have closing arguments on Wednesday morning.

16 So that's my expectation. Assuming that that goes
17 most of the day, and I'm able to instruct you on the law,
18 there is a good chance you could have the case to start
19 deliberating by the end of Wednesday. That may be optimistic,
20 but no later than Thursday morning. I know some of you were
21 curious about the schedule. That's what I anticipate, but
22 things can come up. That's what we expect.

23 Have a wonderful evening, everyone. Do not talk
24 about the case. Do not do any research. Keep an open mind.
25 We're getting close to the end.

Proceedings

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1 THE COURTROOM DEPUTY: All rise.

2 (Jury exits the courtroom.)

3 THE COURT: Everyone can be seated. I think
4 Mr. Lustberg you wanted to ask how the charge conference would
5 work?

6 MR. LUSTBERG: Just very basic question. There are
7 two additional charges that we are going to propose. I can
8 tell you what they are; at least one, the other I'm on the
9 fence.

10 You won't be surprised to hear that we're going to
11 propose a charge on multiple conspiracies. I want to put it
12 in writing for the Court. That's going to be the standard
13 Sand charge, but I'll put it in writing so you have. I'll
14 circulate to all counsel.

15 Contemplating a charge in light of our discussion
16 this morning with regard to Mr. Finning, about a missing
17 witness. Same thing, and you'll have those, we'll get it to
18 everybody so everybody can consider it in plenty of time
19 before the conference.

20 Other than that, what I wanted to ask the Court
21 was -- by the way, I think that charge is great.

22 There is a couple of tweaks that I'm going to
23 propose. Do you want those in writing? Or -- they are true
24 tweaks. We can do them at the conference. I didn't know how
25 you want to hand it.

Proceedings

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1 THE COURT: With respect to the proposed charges,
2 obviously, put those in writing and file them tonight so we
3 can see them.

4 MR. LUSTBERG: I have them already.

5 THE COURT: One question in that regard. When you
6 say missing witness, the instructions already include a
7 general instruction that the Government certainly is not
8 required to call all individuals who are mentioned. There is
9 often an equally-available-witness-charge. I don't think that
10 would necessarily apply here. And typically that's not
11 helpful to the defense, because the argument is that the
12 Government may have greater ability to call certain witnesses.
13 That might be applicable here with someone who would need to
14 be immunized probably before he would testify. So what are
15 you thinking about in terms of missing witness charge?

16 (Continued on next page.)

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Proceedings

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1 (In open court; 5:06 p.m.)

2 MR. LUSTBERG: That's what I meant. Exactly what
3 you just described. There is a charge that is in the books
4 about a situation just like this where the Government has
5 the capacity to immunize a witness and we don't. And so,
6 there is the jury can be instructed to draw whatever
7 inference there is from that fact.

8 To be honest with you, as I said, I'm still
9 looking at that language and if we think it's appropriate,
10 we'll provide it to the Court. So this is just a tiny bit
11 premature but that's just to give you some insight into what
12 I'm thinking about it's a charge that we found in the Sand
13 book and that's why we're thinking about it.

14 THE COURT: Okay. While you're thinking about it,
15 and this is just my preliminary reaction to it, but
16 obviously I'm open to hearing more if you decide to propose
17 one.

18 One is I think an instruction along those lines
19 would be at odds with the other instruction which I think is
20 the law that the Government isn't required to call all
21 witnesses who might have information relevant to the case.

22 So suggesting that somehow the jury should infer
23 anything from the fact that they decided not to call Finning
24 who would have to be immunized in order to be called I think
25 is, A, contrary to that general instruction that they're not

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1 required to call everyone. And B, I think raises
2 speculation that Yong is necessarily helpful to either side
3 that somehow he engaged in criminal conduct, right, if you
4 want to mention the notion of immunity. And C, I guess,
5 gets us into this realm of immunity which is a strange
6 concept strange, meaning, foreign to the jury and I'm not
7 sure worth introducing.

8 I guess the last thing I'll say about it is it
9 seems that Finning's testimony, and even the broader issue
10 of whether or not Mr. McMahon's request to Agent Finning,
11 and it's not entirely clear to me that that's been firmly
12 established. There was only the one witness who said that
13 she received a request to do a search. And obviously, the
14 Government will argue that that had to be from Mr. McMahon
15 asking Agent Finning.

16 But I don't think even that relationship between
17 Mr. McMahon and Agent Finning has been established. But,
18 obviously, there's a logical inference to be made because of
19 the information that was produced and was requested, the
20 search that was requested.

21 But putting that evidentiary tenuousness aside, it
22 seems to me the point even that the search was somehow
23 improper is really a tangential one. So I don't know if I
24 want to introduce an instruction that focuses so heavily on
25 this witness who wasn't called by either side and maybe

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1 because of an immunity issue. So that's my preliminary
2 thoughts on it.

3 MR. LUSTBERG: I appreciate the preliminary
4 thoughts. I hope that those preliminary thoughts are truly
5 preliminary and be open mined if I decide to go the other
6 way.

7 THE COURT: Of course.

8 MR. LUSTBERG: And I do appreciate and I
9 acknowledge that there may be some inconsistency or tension
10 between that and other instructions and that's why I wanted
11 to did a little bit more research and Ed radioing before I
12 propose to.

13 So I just was kind of laying it out so that the
14 Court had some sense going in but I we may find tomorrow
15 morning that I don't know I don't do that.

16 THE COURT: Fair enough, I appreciate the heads
17 up. But in answer to your request about little tweaks just
18 raise it tomorrow. So what we'll do, and the Government is
19 probably more familiar with my process than you are, but I
20 basically -- we start at the beginning and I say: Whoever
21 has some comments, suggestions, objections on any page, name
22 your first page and we just go through the instructions
23 serially or chronologically. And so, whenever your tweak
24 comes up, you say: On Page 25, I have a tweak and then we
25 discuss it.

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1 Any bigger change, though, substantive ones, I
2 would appreciate you fooling Mr. McMahon's process and then
3 submitting something in writing; for example, if you really
4 want to make a major change to an instruction or suggest an
5 instruction a wholly new one or ask for a removal of one
6 that you think is going to be controversial be better if you
7 wrote on it, okay? I think that's all.

8 The other thing is we're going to post tonight a
9 verdict sheet.

10 MR. LUSTBERG: Got it.

11 THE COURT: Okay, right, you all have your phones
12 on so you all saw it, right, instantaneous. So please take
13 a look at that, though, and tell me if there is anything you
14 want me to change about that.

15 Okay?

16 MR. HEEREN: Your Honor?

17 THE COURT: Yes.

18 MR. HEEREN: Couple of quick questions.

19 The first is: Can we please have the witnesses
20 that are going to be called tomorrow by defense counsel.

21 MR. LUSTBERG: I promise. As soon as we're -- I
22 can tell you now or I can do it on the record or I can just
23 inform you afterwards as I said I would.

24 THE COURT: You can inform them afterwards but I
25 actually to want to talk about what's going to happen just

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1 in terms of schedule I'm assuming, Mr. Lustberg, based on
2 what you just said is you're the lead-off presenter for the
3 defense to the extent anyone's presenting witnesses.

4 And so, you anticipate having?

5 MR. LUSTBERG: Three.

6 THE COURT: Three, okay.

7 MR. LUSTBERG: Two very short and then
8 Mr. Gallowitz who you've seen would be the third witness.
9 And I'll tell who the short ones are because they may have
10 not have heard of them.

11 THE COURT: That will take us through a couple of
12 hours in the morning, I think.

13 MR. LUSTBERG: Couple hours maybe more than -- I
14 think the total of my directs of them will be five minutes,
15 five minutes, 25 minutes.

16 THE COURT: And then right, and we'll go through
17 this again in a minute with the defendants, but right now
18 you don't anticipate Mr. McMahon testifying?

19 MR. LUSTBERG: That's correct.

20 THE COURT: So Ms. Wong and Mr. Goldberger, do you
21 anticipate putting on any evidence?

22 MS. WONG: No, your Honor.

23 THE COURT: Not calling your client?

24 MS. WONG: No, your Honor.

25 THE COURT: Okay. Then, Mr. Tung, we did get your

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1 filing which has a couple of Chinese language documents in
2 it.

3 What do you plan to do?

4 MR. TUNG: Actually, I think we will share a
5 witness.

6 THE COURT: Is there a microphone near you? Yes.

7 MR. TUNG: Your Honor, actually me and
8 Mr. Goldberger we share one witness attorney Shi.

9 THE COURT: Okay.

10 MR. TUNG: So the exhibits are put if he wants to
11 use or he may have some other things. I'm only interested
12 in the retainer agreement. It's the entire document. I
13 gave you everything with a cover letter in Chinese but I'm
14 not going to intend to ask him any questions in the Chinese
15 cover e-mail.

16 THE COURT: Okay. So, for the court reporter, the
17 person, the attorney, is S-h-i, attorney Shi. I think the
18 first name is Liping. So that name will presumably come up
19 tomorrow because that's one of the witnesses.

20 MR. LUSTBERG: Correct.

21 THE COURT: Okay. Obviously, if the attorneys are
22 going to testify about these documents, I'll wait to hear
23 the testimony. I just want to make the observation that
24 neither the exhibits provided by Mr. Tung that are
25 agreements are executed. So these seem to be form.

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1 MR. TUNG: Your Honor, those agreements were
2 presented by attorney Shi to my client through the e-mail.
3 So I presume that the Shi will testify that she prepared at
4 least one of her retainer agreement, and the retainer
5 agreement was from Detective McMahon.

6 THE COURT: My observation is the same. None of
7 these are executed, so I don't know if they come in.
8 They're also partly in Chinese. So I don't know, I mean, I
9 guess you can still put them in just to show that they have
10 exist, but if you wanted the jury to understand what's in
11 them, obviously, that's going to be a problem.

12 But I'll wait to see what she says, the only thing
13 I am observing is that neither of these are fully executed.

14 MR. TUNG: Correct, your Honor. The other thing
15 is, I don't know how you're going to handle this because,
16 obviously, some of the questions will touch on her
17 communications with my client and we will consent to waive
18 our attorney-client privilege. So I do not know how you're
19 going to handle this at the beginning or make a statement.
20 I don't know how this is going to be handled.

21 THE COURT: Okay. So let's handle that now
22 because I do want to think before I let you all go which is
23 I want to address all of the defendants and make sure you
24 understood that as has been said throughout the trial as a
25 criminal defendant, you have a constitutional right not to

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1 testify and not put on any evidence and the jury cannot hold
2 that against you. In other words, the Government will not
3 be allowed to argue to the jury that they should convict you
4 based in any way on the fact in a you didn't testify or
5 didn't put on any evidence. So you can remain completely
6 silent and you could not put on any evidence whatsoever and
7 the Government couldn't consider that against you.

8 So do you understand that, Mr. McMahon.

9 MR. MCMAHON: Yes.

10 THE COURT: Mr. Zheng.

11 MR. ZHENG: Yes.

12 THE COURT: He said yes.

13 Mr. Zhu, do you understand.

14 MR. ZHU: Yes.

15 THE COURT: Okay. Now, conversely, you absolutely
16 from the right to testify, if you choose to do so,
17 voluntarily in your own defense.

18 So you understand that, right, Mr. McMahon?

19 MR. MCMAHON: Yes, I do.

20 THE COURT: Mr. Zheng?

21 MR. ZHENG: Yes.

22 THE COURT: Mr. Zhu?

23 MR. ZHU: Yes.

24 THE COURT: No one can prevent you from testifying
25 not even your own lawyers even if you want to testify.

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1 Do you understand, Mr. McMahon?

2 MR. MCMAHON: Yes.

3 THE COURT: Mr. Zheng?

4 MR. ZHENG: Yes.

5 THE COURT: Mr. Zhu?

6 MR. ZHU: Yes.

7 THE COURT: Now, have you discussed, Mr. McMahon,
8 with your attorneys whether to testify or not in your own
9 defense?

10 MR. MCMAHON: Yes, I have.

11 THE COURT: And have you made a decision in that
12 regard?

13 MR. MCMAHON: Yes.

14 THE COURT: And that is?

15 MR. MCMAHON: Not to testify.

16 THE COURT: Okay. Obviously, you could always
17 change your mind so you're not locked into that. But I just
18 want to make sure that you you've spoken to your lawyers
19 about that?

20 MR. MCMAHON: Yes, I have.

21 THE COURT: And you feel like you've had enough
22 time to do that?

23 MR. MCMAHON: Yes.

24 THE COURT: Mr. Zheng, the same questions for you.
25 Have you --

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1 MR. ZHENG: Yes.

2 THE COURT: S you've spoken to your lawyers about
3 whether to testify odder not, correct.

4 MR. ZHENG: Yes.

5 THE COURT: And it's your decision not to testify.

6 MR. ZHENG: Yes.

7 THE COURT: Okay. Again, you can always change
8 your mind at any point before the trial ends.

9 Do you understand that?

10 MR. ZHENG: Yes.

11 THE COURT: You do understand?

12 MR. ZHENG: Yes.

13 THE COURT: And no one can prevent you from
14 testifying, do you understand that?

15 MR. ZHENG: Yes.

16 THE COURT: Okay. And finally, Mr. Zhu, do you
17 understand that you have the absolute right to testify?

18 MR. ZHU: Understood.

19 THE COURT: And you've talked to your lawyer about
20 whether to testify or not?

21 MR. ZHU: Yes.

22 THE COURT: And do you feel like you've had enough
23 time to do that?

24 MR. ZHU: Yes.

25 THE COURT: And have you made a decision about

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1 whether to testify or not at this time?

2 MR. ZHU: I'll think about it.

3 THE COURT: Okay. So you haven't yet made up your
4 mind, correct?

5 MR. ZHU: Correct.

6 THE COURT: So that's your prerogative. You can
7 let us know tomorrow what you decide.

8 MR. ZHU: Okay.

9 THE COURT: But you understand that you have the
10 right to testify or not to testify, and it's entirely your
11 decision and not your lawyer's decision but yours.

12 Do you understand that?

13 MR. ZHU: Yes.

14 THE COURT: Okay. All right. So someone had
15 asked me just now.

16 MR. TUNG: Attorney-client privilege.

17 THE COURT: So, Mr. Zhu, your lawyer has
18 represented to me that because your lawyer, Ms. Shi Liping.
19 Ms. Shi is going to testify tomorrow that you're willing to
20 waive your attorney-client privilege to allow her to testify
21 about what you and she may have discussed in your privilege
22 conversations that's relevant to this case.

23 Do you understand what I've said so far?

24 Let the record reflect that the defendant was
25 consulting with Mr. Tung, his lawyer.

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1 THE INTERPRETER: What's the answer?

2 MR. ZHU: May I ask?

3 THE COURT: You can ask whatever. Hold on one
4 second.

5 You know what, before you ask me anything if you
6 can translate that part. Let me just start off by
7 explaining a couple principles to you. The just to make
8 sure you understand.

9 Whenever you retain a lawyer, the conversations
10 you have with your lawyer for the most part are protected or
11 privileged. No one can force you to disclose them.

12 Do you understand that?

13 MR. ZHU: Yes.

14 THE COURT: So the advice your lawyer gives you is
15 privileged and the information you provide to your lawyer in
16 these private communications with your lawyer are
17 privileged.

18 Do you understand that?

19 MR. ZHU: Yes.

20 THE COURT: Now, other than some exceptions, which
21 aren't worth going into here, no one can force you to
22 divulge those privileged communications. And no one can
23 force your attorney to divulge those privileged
24 communications.

25 So, for example, the Government couldn't put your

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1 lawyer on the stand, Ms. Shi, and say: Tell us everything
2 that you and Mr. Zhu discussed in your private
3 attorney-client conversations. But you, as the client, can
4 waive that privilege or give it up.

5 Do you understand?

6 MR. ZHU: Understood.

7 THE COURT: Sorry.

8 MR. ZHU: Understood. That's fine.

9 THE COURT: If you think it's in your interest in
10 this case to have Ms. Shi disclose and testify about the
11 conversations that you and she had or any advice that she
12 gave you as your attorney, you can waive the privilege and
13 let her speak.

14 MR. ZHU: (In English) Yes.

15 THE COURT: You understand?

16 MR. ZHU: (In English) Yes.

17 THE COURT: It's your decision alone to make, you
18 control the privilege.

19 Do you understand?

20 MR. ZHU: (In English) Okay.

21 THE COURT: If you decide you don't want her to
22 divulge any confidential communication, then she cannot.

23 Do you understand that?

24 MR. ZHU: (In English) Okay.

25 THE COURT: Even if your current attorney,

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1 Mr. Tung, thinks it's in your best to have Ms. Shi testify
2 about your privileged communications you don't have to agree
3 with him; it's still up to you.

4 MR. ZHU: (In English) Okay.

5 THE COURT: Do you understand?

6 MR. ZHU: (Through the Interpreter) Understood.

7 THE COURT: Your lawyer, Mr. Tung, your lawyer in
8 this case, Mr. Tung, has said that he thinks you should
9 waive that privilege or he thinks you will waive that
10 privilege. But I want to hear from you directly whether or
11 not you do want to waive any attorney-client privilege you
12 have with respect to your discussions with attorney Shi.

13 MR. ZHU: Yes, that's okay.

14 THE COURT: So you do want to do that?

15 MR. ZHU: Okay. (In English) Yeah, yeah.

16 THE COURT: I'm going to accept that
17 representation for now but again if you change your mind
18 tomorrow, just let your attorney Mr. Tung know and he'll put
19 that on the record and Ms. Shi won't be allowed to testify
20 in violation of your privilege.

21 Do you understand?

22 MR. ZHU: (In English) Okay. Okay.

23 THE COURT: So it's about 5:25. I'm going to let
24 you all go for the day. Bear in mind one thing. I'm
25 hopeful that we'll be able to start our charge conference

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1 early tomorrow because the day may end early in terms of
2 evidentiary presentation. But even if it doesn't end early,
3 we're going to do that charge conference as we must tomorrow
4 so plan accordingly in terms of your personal lives.

5 MR. HEEREN: Your Honor, two very quick things.

6 The first is I just wanted to ask the Court to
7 remind counsel about the need for counsel, defense counsel,
8 to provide any interpreters that might be needed their
9 witnesses.

10 THE COURT: Yes. Right. I know that, Mr. Tung,
11 you had expressed some concern before but I gather that,
12 hang on, Mr. Zhu isn't testifying and does Ms. Shi speak
13 English.

14 MR. LUSTBERG: Yes, your Honor.

15 THE COURT: So, Mr. Tung, it's not an issue for
16 you; right?

17 MR. TUNG: Right.

18 THE COURT: Okay. And, of course, Mr. Lustberg,
19 you understand your obligation to provide interpreters as
20 needed for your witnesses.

21 MR. HEEREN: And I think we just didn't get the
22 third witness, we got two. We didn't hear the third
23 witness.

24 MR. LUSTBERG: We just sent you some 26.2 material
25 or it's being sent. His name is Paul Brickfield and I

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1 can -- he's an attorney who referred -- was involved in
2 referring this matter to Mr. McMahon.

3 THE COURT: Okay. All right. Anything else from
4 either side before I let you all go?

5 Government?

6 MR. HEEREN: One second, your Honor.

7 (A brief pause in the proceedings was held.)

8 MR. HEEREN: I guess, for the sake of clarity, is
9 there -- since this person is an attorney -- is there any
10 waived needed there between Mr. McMahon and Mr. Brickfield?

11 MR. LUSTBERG: No.

12 THE COURT: I gather their relationship wasn't
13 attorney-client.

14 MR. LUSTBERG: Absolutely not. By the way, for
15 what it's worth, Ms. Shi was never retrained either you.
16 So, I mean, I appreciate the whole colloquy but I'm not sure
17 any of it was relevant. That's why that document that you
18 referenced was unsigned because she was never actually
19 retained.

20 THE COURT: Okay. I got a different impression
21 from what Mr. Tung said.

22 MR. LUSTBERG: I understand that.

23 THE COURT: All right. So that was a nonissue
24 but at least.

25 MR. LUSTBERG: It was fully aired.

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1 THE COURT: There we go. Anything from you,
2 Mr. Lustberg?

3 MR. LUSTBERG: No, your Honor. Thank you.

4 THE COURT: Ms. Wong or Mr. Goldberger?

5 MR. GOLDBERGER: No, your Honor.

6 THE COURT: Mr. Tung, anything else?

7 MR. TUNG: No, your Honor.

8 THE COURT: See you folks at 9:00 a.m. tomorrow
9 morning.

10 (WHEREUPON, this matter was adjourned to June 13,
11 2023, at 9:00 a.m.)

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